The Planning Inspectorate

Costs Decision

Inquiry held and site visit made on 3 September 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Costs application in relation to Appeal Ref: APP/U5930/C/18/3198272
249 High Road, Leytonstone, London, E11 4HH

- The application is made under Sections 174, 320 and Schedule 6 of the Town and Country Planning Act 1990 and Section 250(5) of the Local Government Act 1972.
- The application is made by Chesswell Limited for a full award of costs against the Council of the London Borough of Waltham Forest ("the Council").
- The Inquiry was in connection with an appeal against an Enforcement Notice alleging without planning permission: 1. Building works to convert the first and second floor levels of No. 249 into five one bedroomed self-contained flats. 2. The material change of use of the first and second floor levels of No. 249 into five one bedroomed self-contained flats.

Summary of Decision: The application for an award of costs is refused.

Procedural Matter

1. The related Enforcement Notice appeal was determined on 10 October 2019. The appeal was allowed, and the Enforcement Notice was quashed.

The submissions for Chesswell Limited

2. The costs application was submitted in writing on 29 March 2018. No additional points were made orally at the Inquiry.

The response by the Council

3. The response was made in writing on 25 April 2019. No additional points were made orally at the Inquiry.

Reasons

4. The Planning Practice Guidance ("the PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. Chesswell Limited have also referred to the following parts of the PPG:

   a) For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the Enforcement Notice in the first place.

   b) Local planning authorities are also at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably defending appeals.

6. In December 2017 the Council served a Planning Contravention Notice ("the PCN") on Chesswell Limited regarding the use of No. 249 as five flats.

7. Chesswell Limited completed the PCN on 28 December 2017. They stated, amongst other things, that they purchased No. 249 "with planning".

8. Through the appeal process it was established that Chesswell Limited acquired No. 249 in the early part of 2014. The Vendor's Sales Package included a document which appears to be a planning permission dated 23 February 1973 ("the 1973 planning permission"). It is not possible to be certain what the reference of the 1973 planning permission is – it is not legible. Chesswell Limited were unable to confirm that a Local Land Charges Search (which would have verified whether the 1973 planning permission was recorded on the planning register) was carried out as part of the conveyancing procedure.

9. Having made an extensive search of their planning records the Council could not find the 1973 planning permission on any of the records which they hold. Chesswell Limited are of the view that the Council have lost all the records relating to the 1973 planning permission.

10. Chesswell Limited relied on the 1973 planning permission when they appealed against the Enforcement Notice on Ground (c) i.e. that there had not been a breach of planning control because the 1973 planning permission permitted the five flats.

11. The onus of proving the Ground (c) appeal fell on Chesswell Limited.

12. The 1973 planning permission purports to grant planning permission for the "Conversion of shop upper into Five one-room bedsitter units" ("the 1973 Development") at No. 249. The 1973 planning permission states that permission was granted for the 1973 Development in accordance with the plan(s) accompanying the application and subject to compliance with the planning conditions specified therein.

13. Chesswell Limited were not able to provide any plans which accompanied the application for the 1973 planning permission.

14. The 1973 planning permission had to be commenced within five years of its purported grant. The Prudential Assurance Company Limited were the owners of No. 249 throughout that five year period. There is no evidence from the Prudential or any other person that the 1973 planning permission was commenced within the five year period.

15. I conclude that Chesswell Limited would have failed to demonstrate on the balance of probabilities that the 1973 planning permission authorised the five one bedroomed self-contained flats at No. 249. Accordingly, their appeal on Ground (c) would have failed.

16. I therefore conclude that the Council did not fail to carry out the necessary investigations regarding the planning history of No. 249 prior to the issue of the Enforcement Notice.

17. I allowed the appeal by Chesswell Limited on Ground (d) but do not consider that the Council acted unreasonably in issuing the Enforcement Notice or maintaining their position that the Ground (d) appeal had not been proved by Chesswell Limited. Whether Ground (d) was proven or not is a matter of

judgement and the Council's position that Ground (d) had not been established by Chesswell Limited did not amount to unreasonable behaviour.

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Formal Decision

19. The application for an award of costs is refused.

Tim Belcher

Inspector