



Costs Decision

Hearing Held on 24 September 2019

Site visit made on 24 September 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Costs application in relation to Appeal Ref: APP/N4720/C/18/3202988 Land at Block B (excluding land at Flat No 149), 115 - 153 The Chandlers, Leeds LS2 7EJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Leeds City Council for a full award of costs or in the alternative a partial award of costs against Mr Amr Sheibani, City Centre Apartments Limited (CCAL) (Co. no. 09976673) and a partial award of costs against Mr Abubaker Sheibani, The Bridge Properties & Investments Limited (BPIL) (Co. no. 09331376).
 - The appeal was against an enforcement notice alleging Without planning permission, the material change of use from residential use (Class C3) to a mixed use of: residential use (Class C3) and holiday letting/commercial (leisure or business) use (sui generis).
 - The requirements of the notice are To cease the use of the Land for holiday letting /commercial (leisure or business) use.
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Decision

1. The application for a full award of costs is refused. However a partial award of costs against CCAL is approved in the terms set out below in the Costs Order. A partial award of costs against BPIL is refused.

The submissions for the Council

2. The Council has queried whether CCAL can be said to have had an interest in the land, citing that the tenancy agreement provided is in draft form and unsigned.
3. It says that if CCAL did have an interest in the land it did not adequately engage with the Inquiry process and has failed to provide substantial and coherent grounds of appeal.
4. The Council says that CCAL withdrew its appeal and several of the grounds without warning, after the Council had prepared its evidence and instructed Counsel to prepare to attend the Inquiry, and despite earlier correspondence inviting the appellant to withdraw the appeal in good time.
5. The Council says that the appeal on grounds (c) and (f), purportedly maintained through BPIL, who improperly entered the appeal, necessitated the Council's attendance at the Inquiry. Even if BPIL was never an appellant it has acted improperly causing the Inquiry to take place. It refers to the director of BPIL saying that he did not dispute any of the Council's evidence.

The 'appellants' response

6. CCAL has made no formal response to the costs application.
7. BPIL's response is that it should be regarded as an interested party and as such should not be subject to an award, in line with the government's guidance regarding the award of costs (though it later says that it was acting in good faith as an appellant, in accordance with confirmation of such by the Planning Inspectorate). There was no challenge by the Council to BPIL's 'appellant' status until the Hearing.
8. There was no adjournment granted at the Hearing and therefore no material cost to the Council arising from this, and in any event BPIL requested the matter be dealt with by written representations.
9. BPIL has not challenged evidence produced by the Council and was relying on CCAL pursuing the Inquiry; has never operated the property for the use complained of; at no time did BPIL refuse to co-operate and sought advice from the Council on what it considers would constitute a short-term let. It received confirmation from the Council in July 2018 that it considered the notice was being complied with.
10. BPIL terminated its tenancy with CCAL within 4 weeks of the notice being served and did not seek to take advantage of the delay until the Inquiry was heard; any family link between the two companies is not relevant.

Reasons

11. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
12. Paragraph 052 of the PPG² advises that an appellant is at risk of an award of costs being made against them, on procedural grounds, if they are resistant to or fail to co-operate with the other party in terms of providing information or if they withdraw an appeal without good reason.
13. Paragraph 053 of the PPG³ advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appellant fails to provide adequate evidence to support their case.

The applications against CCAL

14. In terms of CCAL's interest in the land, I have been provided with a draft tenancy agreement between BPIL and CCAL (unsigned and undated)⁴. It would appear that this document was previously provided to and receipt of it acknowledged by the Council⁵. Milners, in response to a Planning Contravention Notice served by the Council, confirmed, under threat of prosecution, that apartments in Block B, The Chandlers were being let to

¹ Reference ID: 16-030-20140306

² Reference ID: 16-052-20140306

³ Reference ID: 16-053-20140306

⁴ BPIL Costs response – exhibit 2

⁵ See Milners letter dated 3 August 2017 and Council's letter dated 18 August 2017 (BPIL Costs response – exhibits 1 and 4)

- CCAL⁶. The Council later decided that it was appropriate to serve a copy of the enforcement notice on CCAL. From the information before me I am persuaded, on balance, that CCAL had an interest in the land and that their appeal was duly made.
15. In submitting only the initial grounds of appeal, and not providing a statement of case or proof of evidence, it is certainly the case that CCAL provided minimal information in support of its position. Notwithstanding this CCAL was able to set out its ground (c) case, that is to say the reason it considered a breach of planning control had not occurred and the ground (f) case that lesser steps would be appropriate to overcome the breach.
 16. Despite the change of appeal procedure and the statement by BPIL at the event that it did not seek to challenge the Council's evidence, these residual grounds of appeal, albeit purported, which relate to the position at the time when the notice was issued and which BPIL said it wished to continue, nevertheless ostensibly still had to be dealt with.
 17. I have not been provided with evidence to support the view that these grounds had no real prospect of succeeding (a fact and degree assessment would have been required in relation to ground (c)). Accordingly I find that the Council did not incur wasted expense in terms of either the preparation of its case or attendance at the Hearing in relation to appeal grounds (c) and (f). A full award of costs against CCAL would not therefore be justified.
 18. In terms of timing, CCAL withdrew its appeal including grounds (b), (e) and (g) on 6 September 2019, around 2 weeks prior to the Inquiry. I have taken into account that the company has not sought to rebut the Council's claim regarding the unreasonable late withdrawal of its appeal. There had been no material change to the Council's case or to the circumstances relevant to the planning issues. Accordingly the withdrawal of appeal grounds, at such a late stage in the process and without good reason, was unreasonable behaviour.
 19. Furthermore the withdrawal of appeal grounds (b), (e) and (g) was at a time after which the Council would have produced its full evidence in response to these grounds. In light of this I am in no doubt that that the Council has incurred wasted expense, and that a partial award of costs against CCAL is appropriate on this basis.
 20. That BPIL is aggrieved regarding lack of advice on what would constitute short term lets is a matter that would need to be taken up with the Council and is not for my deliberations in this case. Similarly, the fact that the requirements of the notice were deemed by the Council to be complied with and that BPIL terminated the tenancy of CCAL within 4 weeks of the notice being served does not have a bearing on the above findings.

The application against BPIL

21. In concluding that residual grounds (c) and (f) ostensibly had to be dealt with, I am mindful that I found BPIL did not have the status of appellant. However I have also taken into account that the Council only challenged this specific matter once the Inquiry had commenced, before which it was manifestly treating BPIL as an appellant.

⁶ See Milners letter dated 16 May 2017 (H Farrer Proof of Evidence - Appendix HF8)

22. I am mindful of the representation from BPIL prior to the event, albeit at a late stage in the process, that it no longer wished for the matter to be determined by Inquiry. Furthermore, as set out in the main decision, I considered that it remained appropriate to hold an Inquiry, given the issues raised in the ground (c) appeal.
23. I am not therefore persuaded, taking account of the above considerations, that it can reasonably be said that BPIL necessitated the Council's attendance at the Inquiry or that it caused the Inquiry to take place through improper conduct.
24. I have concluded above that the residual grounds of appeal, (c) and (f), needed to be dealt with, at least ostensibly. BPIL said at the event that it did not seek to challenge the Council's evidence. However neither did BPIL seek to withdraw the remaining appeal grounds, albeit that minimal information in support of its position had previously been provided and it did not succeed in advancing its case any further. Nevertheless I find that, in relation to BPIL, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Amr Sheibani, City Centre Apartments Limited (Co no 09976673) shall pay Leeds City Council, the costs of the appeal proceedings, limited to those costs incurred in relation to the failure to withdraw at an earlier stage the appeal on grounds (b), (e) and (g); such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
26. The applicant is now invited to submit to Mr Amr Sheibani, City Centre Apartments Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Merrett

INSPECTOR