The Planning Inspectorate

Costs Decision

Inquiry Held on 10 and 11 September 2019 and 10 March 2020

Site visit made on 10 March 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Costs application in relation to Appeal Ref: APP/A2280/C/18/3197399
Building G, land rear of 48-52 Napier Road, Gillingham, Kent ME7 4HD

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs J Sangha for a full or, in the alternative, a partial award of costs against Medway Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging without the benefit of planning permission, the change of use to six self-contained flats.

Decision

1. The application for an award of costs is refused

The submissions for Mrs J Sangha

2. Mrs Sangha submits that the Council should have reviewed their case throughout the appeal process in accordance with Government guidance. The Council were put on notice that they should do this by letter in January February and April 2019 but they should have especially done this after the September 2019 adjournment. It was at this point that the third rent book had been found together with some other documentary evidence. This evidence was put in order and analysed. The subsequent tables showed that there had been four years continuous use of each flat before the issue of the notice. This was only accepted by the Council's witness on the third day of the Inquiry.

The response by Medway Council

3. The Council submit that it is unfair to criticise their actions as the case was not straight forward and it was necessary to open the Inquiry and test the available evidence. If it had been straight forward, there would have been no reason to request an adjournment to submit additional evidence. The Council continued with their case after the adjournment as it was necessary to look at the additional evidence in the context of the oral evidence.

4. The applicant’s case was largely based on the rent books but the Council questioned their accuracy and reliability and as such, not accepting the tables is no basis for suggesting unreasonable conduct. Furthermore, the rent books were but one part of the evidence and as there was no corroborating evidence, it was not unreasonable for the Council to continue with their case.

5. In addition, the applicant has not addressed the second requirement in making a costs application in that she has not demonstrated how the Council’s behaviour has led to unnecessary expense. Even if the Council had agreed the

information in the tables, it does not mean that the Council accepted all of the evidence and it therefore follows that day three of the Inquiry was necessary.

Reasons

6. The Planning Practice Guidance (the Guidance) advises that costs may only 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.

7. The onus is on both parties to keep their cases under review during the appeal process. Whilst the Council are apparently at fault in the applicant's eyes, it is not accepted that their actions, up to and including the sitting days of the Inquiry in September, could be considered as unreasonable conduct. This is because the evidence needed to be tested and the witnesses needed to be heard, especially as the veracity of the witness statements was questioned by the Council. This testing of the evidence revealed how the rent books came into being, how they were used, their deficiencies and that they were 'fairly comprehensive'. The oral evidence from some of the witnesses also revealed that from where they lived, they could not see the front doors of the flats and they could not remember any particular times or dates.

8. Thereafter, the discovery of the third rent book after day one of the Inquiry, and some other documents, meant that there was a need to consider whether to accept this additional evidence. This evidence was accepted not only in the interests of natural justice but also to have all the available material in order to make a decision on the appeal.

9. During the adjournment the applicant was asked to put the evidence in order, explain it and analyse it. The Council were then given an opportunity to comment on it and both parties were asked to produce an agreed analysis and, if there was disagreement, to set this out. Unfortunately, whilst the applicant produced the tables which analysed the evidence, these were only accepted by the Council on day three of the Inquiry. However, even if agreement had been reached before hand, this was only in respect of one part of the evidence. The analysis was also not quite complete as it was necessary to add page numbers to the rent books and cross reference those to the evidence laid out in the tables so that the evidence could easily be read. This cross-referenced information was only provided in the applicant's closing submissions.

10. Although the Council had no evidence to contradict the applicant's, through cross examination they exposed some of the issues in her case, such as the draft tenancy agreements. It was also the Council's case from the outset that the 2010 enforcement notice precluded success on ground (d) in respect or Flats A to C, which the applicant did not accept but which was subsequently upheld in my decision.

11. Whilst the applicant was ultimately successful in demonstrating her case for Flats D to F, this was not clear from the outset. As such, not only did the evidence need to be tested but the submission of the additional material, together with the analysis of all the material, was necessary to complete her case. The Council were entitled to test all of it, the fact that they reached a different conclusion from me in weighing the evidence is not grounds for establishing unreasonable behaviour. Furthermore, there was no wasted expense as all three days of the Inquiry were needed.

Conclusion

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

D Fleming

INSPECTOR