The Planning Inspectorate

Costs Decision

Inquiry Held on 19 & 20 September and 7 November 2019

Site visit made on 20 September 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2020

Costs application in relation to Appeal Ref: APP/U5360/C/18/3208237
Land at Unit 2 Ravendale Industrial Estate, Timberwharf Road, London N16 6DB

- 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 Avon Group of Companies for a full award of costs against the Council of the London Borough of Hackney.
- The inquiry was in connection with an appeal against an enforcement notice alleging 'Without planning permission, the change of use from warehouse to self contained flats and associated external alterations, namely the addition of an external staircase to the Western elevation, single storey extension to the Western elevation and the installation of new windows, doors and roof-lights.'

Decision

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

The submissions for the London Borough of Hackney (the applicant)

2. The costs application was submitted in writing. The following additional points were made orally:

    - The Council appreciated that the decision on procedure was a matter for the Planning Inspectorate;
    - The appellant however failed to review their position and it should have been clear following the receipt of the Council's evidence that the appellant's case was indefensible;
    - The Council had nothing negative to say about the residents who gave evidence; and
    - There were some discrepancies in the evidence of one witness.

The response by Avon Group of Companies (the appellant)

3. The response was made in writing. The following additional points were made orally:

    - The appellant did review the Council's case;
    - The appellant's response to photographs was set out in the appellant's rebuttal;
    - Nothing in the Council's case made the appellant's case indefensible;

- There was no misrepresentation of facts. There was a proper interpretation of facts set out in the rebuttal; and
- There was value to the Inquiry in the oral evidence of the tenants.

Reasons

4. The Planning Practice Guidance (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. The applicant initially put forward a procedural claim for costs on the basis that it was dealt with via an Inquiry. However, I explained that the choice of procedure was a matter for the Planning Inspectorate and that it met the criteria for an Inquiry. The Council agreed to not pursue this procedural claim for costs.

6. The substantive claim for costs relates to the grounds (a) (having no realistic prospect of succeeding), (c) (the interpretation of the Prior Approval Notices (PANs) for the ground and first floor and the associated external alterations to the building) and the withdrawal of ground (f) appeal.

7. In relation to the ground (a) for the reasons set out in my decision it is clear I do not accept that it had no prospect of success as planning permission is granted for the first floor units. The appellant did not behave unreasonably in pursuing this ground of appeal.

8. In relation to ground (c) again the decision sets out the complexity of the case and it was not unreasonable for the appellant to pursue this ground.

9. In relation to ground (f) the appellant withdrew this ground at the Inquiry. The appellant indicated at the start of the Inquiry that this may be the case, and formally withdraw ground (f) on the final day. I consider it was not unreasonable for the ground (f) to be lodged as the appellant considered that the scope of the requirements exceeded what was necessary to remedy the breach of planning control. I sought to clarify the allegation at the Inquiry in the light of the appellant's submissions, partly on ground (f). In the light of this, and the appellant reviewing, as the PPG requires, its case throughout the appeal process, the ground (f) was withdrawn as the appellant considered it was no longer of assistance. The withdrawal of the ground of appeal also shortened the Inquiry sitting time. I consider this was not unreasonable behaviour in the particular circumstances of this case.

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

Hilda Higenbottam

Inspector