Costs Decision

Site visit made on 3 August 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Costs application in relation to Appeal Ref: APP/A5270/C/20/3244934
Unit 2, Logic House, Belvue Road, Northolt, Middlesex UB5 5QJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by London Borough of Ealing for a partial award of costs against Mr Alex Reed on behalf of Wish Lounge Limited.
- The appeal was against an enforcement notice alleging without planning permission: The erection of a raised platform to the front and side of the premises, the erection of a retractable canopy extension to the front and side of the premises and the material change of use of the premises to a shisha lounge.

Decision

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

Reasons

2. 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

3. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. The PPG states that one example of unreasonable behaviour which may result in an award of costs against an appellant is providing information that is shown to be manifestly inaccurate or untrue.

4. The Council claims that the appellant acted unreasonably in terms of procedural matters when proceeding with the ground (b) appeal and claiming that the premises is in use as a café (Use Class A3) rather than shisha lounge (Sui Generis). It is also claimed that the appellant has failed to substantiate their claim that the alleged breach of planning control has not occurred, and that the Council has spent considerable time and incurred wasted expense in dealing with the ground (b) appeal, which had little chance of success.

5. It was before the appellant to consider which grounds to appeal on. The appellant accepts that shisha smoking occurs at the premises, but considers that, in planning terms the premises should not be considered to be a Shisha lounge, but instead a café, with shisha part of the product mix. Whilst it will be seen from my decision that I disagree with the appellant on this matter, some evidence has been put forward to support the appellant's claim. This includes sales breakdown from a week in October 2019, which illustrates that the business sold hot drinks, sandwiches, salads, desserts and shisha. Therefore, the appellant's claim is not quite unsubstantiated. I also note that third parties have confirmed that they have used the premises for meetings and that customers of the neighbouring garage have bought drinks from the business when waiting for their cars to be repaired. It follows I am satisfied that the appellant has not acted unreasonably by making this claim.

6. No substantive evidence has been submitted to demonstrate that the operational development alleged, has not occurred when the notice was served. Whilst I acknowledge that the appellant's failure to provide any evidence with regards to this aspect of development, amounts to unreasonable behaviour, I am not convinced that this in itself has resulted in any unnecessary or wasted expense with dealing with this appeal. Indeed, the Council's evidence on this matter consists of photographs of the appeal site before and after the development took place, which would not have been an arduous task. Therefore, the Council has not been put to any unnecessary or wasted expense with dealing with this appeal.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the Council's claim for costs fails

R Satheesan

INSPECTOR