



Costs Decision

Site visit made on 11 August 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2021

Costs application in relation to Appeal Ref: APP/X5990/C/19/3231976 The Trocadero, 13 Coventry Street, London W1D 6DG

- 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 City of Westminster Council for a full award of costs against Five Guys JV Ltd.
 - The appeal was against an enforcement notice alleging: Without the requisite planning permission and within the last 10 years, the material change of use of the parts of the building shown edged in red in the attached photographs A, B and C to the use for the display of advertisements.
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.

Reasons

2. The Planning Practice Guidance 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.
3. In respect of the ground (a) appeal, a previous appeal¹ was dismissed on 22 November 2019. The Council considers that appeal was for substantially the same scheme as that which is before me. From the information provided, this is true in respect of the parts of the building shown edged in red in photograph C attached to the enforcement notice (ie the advertisements displayed on the Great Windmill Street elevation of the building only).
4. There is no evidence circumstances have materially changed in the intervening period and yet the appellant, who is professionally represented, persisted with the ground (a) appeal in respect of the parts of the appeal development described above. It makes no difference that the previous appeal sought consent via the advertisement regulations² rather than the deemed planning application route³ in the appeal before me as the considerations are essentially the same.
5. In respect of the ground (b) appeal, it is clear from the photographs attached to the enforcement notice that the matters stated in the notice have occurred and so the appeal had no reasonable prospect of succeeding. It makes no difference whether any of the advertisements have been removed, such that

¹ APP/X5990/Z/19/3231934

² The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

³ Pursuant to section 177(5) of the Town and Country Planning Act 1990 (s amended)

the breach in respect of removed advertisements is not 'occurring'. This is an important distinction the appellant, who is professionally represented, has failed to recognise. It is irrelevant that photograph A attached to the notice includes advertisements that do not form part of the alleged breach as it is a matter for the Council as to how (and if) a breach is pursued.

6. In respect of the ground (d) appeal, it does not matter how long the advertisements have been displayed. What matters is whether enforcement action could be taken in respect of the breach of planning control on the date the notice was issued, pursuant to section 171A of the 1990 Act noted above. From the information available, it is clear from the terms of the latest express consent that the advertisements became unlawful 3 years after they were granted and so the Council was able to take enforcement action when the notice was issued as the relevant 10 year period for taking action had not expired.
7. The appellant, who is professionally represented, is clearly aware of the planning history, including the relevant express consent and its condition limiting the display of the advertisements to 3 years, having explicitly referred to these in their statements. Considering the above, the ground (d) appeal had no reasonable prospect of succeeding.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Five Guys JV Ltd shall pay to City of Westminster Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of: the ground (b) appeal, the ground (d) appeal, and the ground (a) appeal insofar as it relates to the parts of the building shown edged in red in photograph C attached to the enforcement notice (ie the advertisements displayed on the Great Windmill Street elevation of the building only); such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Five Guys JV Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR