The Planning Inspectorate

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/19/3231988
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 Simply Sugar 2 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.

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. The appellant requested that the appeal proceed by way of an Inquiry. But this in itself is not unreasonable behaviour. Whilst the appellant made no ground (d) appeal, the complexity of some of the issues involved in the appeal could have meant an Inquiry was required, notwithstanding that ultimately this was not the case. Ground (a) was pleaded initially. But this lapsed long before statements of case were submitted and the appeal started. Therefore, I am satisfied an award of costs is not justified by any of the above issues considered separately or cumulatively.

4. In respect of ground (c) however, the appellant claimed that the breach was not a material change of use and that express consent was secured for the breach. But the Council's case was that the breach alleged is a material change of use due to section 55(5) of the 1990 Act noted above. This was set out in the Council's delegated report and its statement of case. Yet the appellant, who is professionally represented, has misunderstood the notice in this regard and focussed instead on their use of their retail unit rather than the breach alleged.

5. The relevant appeal decision[1] relied on by the appellant clearly states the relevant advertisements were dismissed and so the appellant's case is misleading in this regard. It makes no difference who handled the previous

[1] APP/X5990/Z/19/3232302 dated 18 October 2019

appeal for the appellant as that decision, a copy of which was provided by the appellant, is self-explanatory: the banner advertisements were dismissed.

6. The appellant's lack of awareness of section 55(5), referred to above, and the provision of information which is inaccurate or untrue in respect of the previous appeal decision, means I consider the appellant failed to substantiate their ground (c) case.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the ground (c) appeal and that a partial award of costs is justified.

Costs Order

8. 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 Simply Sugar 2 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 (c) appeal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to Simply Sugar 2 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