The Planning Inspectorate

Costs Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date:16TH June 2022

Costs application in relation to Appeal Ref: APP/A5840/F/21/3267337
The building situated at 2 Queens Road, London, SE15 2PT

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Menelaus Joaquin Raido Louca for a full award of costs against the Council of the London Borough of Southwark.
- The appeal was against a listed building enforcement notice alleging alterations to the listed building at basement, ground floor, first floor and second floor level and to the exterior as detailed in Schedule 1 to the appeal decision.

Decision

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

Preliminary Matter

2. The Council was given an opportunity to respond to the appellant's application for costs, but no response was received.

Reasons

3. 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.

4. The basis for the appellant's application is that the Council has: adopted an entrenched position and not engaged with the appellant's evidence; made suggestions which are unsupported by specialist expertise; failed to present a coherent argument for the 12 month compliance period based on the relevant facts; introduced irrelevant comparative evidence; issued an enforcement notice without taking heed of the Government's approach to ease pressure on small businesses during the pandemic; raised a new argument at final comments stage; and not kept to the appeal timetable.

5. Dealing with each of these in turn, I do not consider that the Council has adopted an entrenched position or failed to engage with the appellant's evidence. Whilst the Council has not submitted a detailed analysis of the appellant's evidence, it is plain that this has been taken into consideration. The Council has essentially summarised the premise of the appellant's primary argument on ground (h) as being that the appellant/company does not have adequate finances to fund the works. In the light of this position, the Council

questions whether all potential options for financing have been explored and indicates its view that they have not.

6. Whilst there is nothing to suggest that the Council has sought specialist advice in making suggestions related to selling the residential development site at the appeal property, this is in my view a common sense suggestion, which does not require specialist advice in support.

7. As to whether the Council has presented a coherent argument for the 12 month compliance period, it is apparent that this seeks to give the appellant a reasonable period within which to complete the specialist works, whilst striking a balance bearing in mind ongoing harm to the heritage asset. Although the Council does not provide detailed submissions as to how it has calculated this period, it has correctly surmised the appellant's objection to it as being financially based, and then has questioned the options available to the appellant to finance the works. Thus, I find that the Council has formed a coherent argument in this regard.

8. The Council referenced another case[1] where a building was demolished and required to be rebuilt over a two year compliance period. The appellant takes the view that this was irrelevant comparative evidence on the basis that works to the listed building were patently not so harmful as demolition. However, in my view, the Council properly introduced this evidence to illustrate that the compliance period in this case is reasonable, given that the works required are not so extensive as in the Carlton Tavern case.

9. As to whether the Council was unreasonable in taking enforcement action in the light of government policy and legislation seeking to ease pressures on small businesses during the course of the pandemic, in my view, the Council engaged with the appellant in relation to the effects of the pandemic and more generally regarding the proposed timescale in email correspondence, and has sought to balance the pressures on the business as against the ongoing harm to a heritage asset.

10. The Council has not raised a new argument at final comment stage in reference to the appellant not putting forward a specific alternative compliance period as this point was referenced in the Council's statement.

11. The Council was late in submitting its questionnaire and accompanying documents and no justification was given for this. This amounts to unreasonable behaviour. However, I do not find that this resulted in wasted expense beyond a de minimis level given the minimal email correspondence dealt with by the appellant related to this. Thus, the second limb of the test is not met.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

V Bond

INSPECTOR

[1] Which the appellant subsequently gave the appeal reference for as APP/X5990/C/15/3130605 (Carlton Tavern case)