The Planning Inspectorate

Costs Decision

Site visit made on 20 September 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Costs application in relation to Appeal Ref: APP/B4215/C/22/3292609
Land at The Loft, Unit F (Cohens), Hillbit House, 1 New Street, Manchester M40 8AW

- 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 Manchester City Council for a full award of costs against Animal Crossing Music Limited.
- The appeal was against an enforcement notice alleging, the material change of use of the premises to a cultural events space (Sui-Generis).

Decision

1. The application for an award of costs is allowed 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 Council submit that a full award of costs is justified for the costs it has incurred in resisting this appeal. They believe that the Appellant has acted unreasonably by continuing with a ground of appeal that had no prospect of success, despite being given opportunities to withdraw the notice.

4. After the appeal submission the Council contacted the Appellant and indicated that they were prepared to extend the notice compliance period pursuant to the powers available under s173A of the Town and Country Planning Act, 1990 (as amended) (the Act), and suggested a course of action whereby this could be achieved. The notice was formally varied on 4 March 2022 including a revised compliance period of six months, which was two months more than the four-month period the Appellant was seeking to achieve in his appeal. The Council advised the Appellant by email of the extended time on 4 March 2022 and requested that the appeal against the enforcement notice be withdrawn.

5. It is the Council's case that once that notice had been varied the Appeal had no reasonable prospect of success. It was thus unreasonable behaviour for the Appellant to continue with the Appeal and the Council have had to incur costs in mounting a defence.

6. In response the Appellant states that they engaged in correspondence with the Council in a timely manner. However, considering the outstanding s78 appeal[1], which related to the breach alleged in the enforcement notice, the Appellant was concerned that should the enforcement notice come into effect prior to the determination of the s78 appeal, they would be required to undertake physical works to the property which would be abortive if the s78 appeal was allowed. It was on that basis that the Appellant had sought to have further discussions with the Council prior to the notice being varied. The Appellant advises that they would have been willing to withdraw the enforcement notice appeal if they had had assurances from the City Council that the works would not need to be removed before the outcome of the s78 appeal.

7. PPG advises that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding[2].

8. The appeal was lodged on 11 February 2022. As set out above, the Council immediately reacted and wrote to the Appellant to advise him that the Council would be willing to extend the compliance period and provide a letter of assurance against prosecution under s172 of the Act. The compliance period was subsequently extended to six months by a formal variation of the notice on 4 March 2022.

9. The appeal was made on the ground that the compliance period was not reasonable. I appreciate that the Appellant was concerned that if they withdrew the appeal and the notice came into effect, then they may be in a position of having to comply prior to the outcome of their s78 appeal for the same development. However, once the Council had varied the notice to extend the time period to six months, it is clear to me that the Appellant's appeal which sought a four month compliance period, had no reasonable prospect of success. Furthermore, the Council wrote to the Appellant on 4 March 2022 to advise of the variation, and to request that the appeal be withdrawn to prevent wasted time and expense in defending it. At no time has the Appellant indicated that the varied compliance time of six months was not reasonable, and I agree with the Council that at it was unreasonable for the Appellant to continue to pursue the Appeal once the notice had been varied.

10. For the above reasons, I find that unreasonable behaviour by the Appellant, resulting in unnecessary expense, as described in the Planning Practice Guide, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Animal Crossing Music Ltd shall pay to Manchester City Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

[1] APP/B4215/W/22/3292608
[2] PPG Paragraph:053 Reference ID:16-0530-20140306

12. The applicant is now invited to submit to Animal Crossing Music Limited, 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.

Elizabeth Pleasant

INSPECTOR