The Planning Inspectorate

Costs Decisions

Site visit made on 30 May 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 July 2023

Costs applications A and B in relation to Appeal Refs: APP/M4320/C/22/3302856 and APP/M4320/C/22/3302857
38 Waller Street, Bootle L20 4PU

- The applications are 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 applications are made by Mr Marek Zakurzewski and Ms Marika Slominska for a full award of costs against Sefton Metropolitan Borough Council.
- The appeal was against an enforcement notice alleging a change of use from a dwellinghouse (C3) to a short term holiday let (Sui Generis).

Costs application C in relation to Appeal Ref: APP/M4320/W/22/3302854
38 Waller Street, Bootle L20 4PU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Marek Zakurzewski and Ms Marika Slominska for a full award of costs against Sefton Metropolitan Borough Council.
- The appeal was against the refusal of planning permission for a change of use from a dwellinghouse (C3) to a short term holiday let (Sui Generis).

Decisions

1. The applications for awards of costs are refused.

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. "Unreasonable" is used in its ordinary meaning as established by the Courts[1], and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

3. The appellants state that a material change of use in the property has not occurred, but they felt they had no option but to make a planning application to avoid enforcement action being taken. The application resulted in unnecessary expense, including the application fee, drawings and input from a planning consultant. In addition, the appellant state that an enforcement notice has since been served, notwithstanding an application being invited in by the

[1] Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

Council and unnecessary expense has been incurred having to appeal an Enforcement Notice whereby there is no breach of planning control as set out in Ground (c).

4. Firstly, as I have stated in the Main Decision, establishing whether or not a material change of use has occurred is very much a question of fact and degree in each case and the answer will very much depend on the particular characteristics of the use as holiday accommodation. Therefore, there is a degree of judgement in each case. Although I have found against the Council in this case, I do not consider their approach has been flawed or unreasonable.

5. Secondly, the appellants will have incurred costs in submitting the planning application, but the costs regime is in place for unnecessary or wasted expenses related to the appeal process only. Consequently, it is not for me to award costs associated with the submission of a planning application.

6. Finally, I understand that the appellants have submitted appeals against the enforcement notice, but part of that appeal decision-process has been to determine whether or not, as a matter of fact and degree the material change of use as alleged in the notice has occurred. The Council considered it expedient to take enforcement action and although I have found in favour of the appellants in those appeals the Council did not behave unreasonably in defending that course of action.

Conclusion

7. I find that with respect to Appeals A, B and C, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs are not justified.

A A Phillips

INSPECTOR