

Cost Decision

Site visit made on 24 June 2014

by Sandra Prail, MBA, LLB (Hons), Solicitor (non practising)

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

Decision date: 23 July 2014

Costs application in relation to Appeal Ref: APP/X5210/C/13/2209156 Land at 129 Kentish Town Road, London, NW1 8PB.

- 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 Redcourt Ltd for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the enforcement notice alleging without planning permission the erection of a timber structure to the rear of the property.
 - The requirement of the notice is to permanently remove the structure along with all associated material and make good the land.
 - The period for compliance with the notice is one month.
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Decision

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

Procedural matter

2. The application for costs was made and responded to on the basis of Circular 03/2009 which has been superseded by the Planning Practice Guidance (the Guidance). However, having regard to the submissions put to me, I am satisfied that no party will be prejudiced by my judging the application and response against the Guidance.

The submissions made on behalf of the Appellant

3. The Appellant's case is that the Council has acted unreasonably by (i) failing to follow the National Planning Policy Framework (the Framework) in not attempting to contact the Appellant before the issue of the Notice or issuing a Planning Contravention Notice, (ii) not entering into a dialogue with the Appellant following the issue of the notice and not inviting an application for planning permission, and (iii) failing to make a site visit and refusing to meet the Appellant on site. These actions have put the Appellant to wasted expense in submitting an appeal against the enforcement notice which would not have been necessary if an alternative to enforcement action had been identified.

The submissions made by the Council

4. The Council refutes the allegations that their behaviour has been unreasonable and has led to the Appellant incurring unnecessary or wasted expense. They refer to the history of enforcement concerning structures at the rear of the property. They say that an earlier enforcement notice was issued concerning a smaller unauthorised structure and that prior to the determination of an appeal

against that notice the Appellant demolished that structure and constructed a larger replacement. This led to the issue of the notice the subject of this appeal. Therefore in the context of an ongoing enforcement case the Appellant should have been clear about the Council's planning concerns and therefore it was inappropriate to invite a retrospective application. They say that other Council departments had advised against meetings at the appeal premises without a police presence and that they offered the Appellant an alternative meeting at the Council. They say that they saw the structure at the appeal site visit on 20 August 2013 and therefore no further inspection was necessary.

Reasons

5. I have considered this application for costs in the light of the Guidance and all relevant circumstances. The Guidance advises that irrespective of the outcome of the appeal costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense.
6. The Guidance indicates that a planning authority is likely to be at risk of an award of costs where it has refused to enter into pre-application discussion or where a more helpful approach would probably have resulted in either no appeal or the issues being narrowed. In this case the structure was erected in the midst of appeal proceedings concerning a structure in the same location. In the context of this planning history it is unlikely that further discussion would have resulted in any different outcome. The Council had made clear its planning concerns. It was reasonable for the Council not to issue a Planning Contravention Notice. This is because there is nothing before me to suggest it had insufficient information against which to judge the expediency of enforcement action. The Council's approach in issuing a second enforcement notice without inviting a planning application was not unreasonable and did not result in the Appellant incurring unnecessary expense.
7. The Guidance indicates that a lack of cooperation by one party may justify an award of costs. In this case the Council says that it made a conscious decision not to meet the Appellant on site. I do not know the detail leading to the advice for a police presence but the Appellant does not challenge this point. In these circumstances the offer of discussion on Council premises was reasonable. It is not in dispute that the Council saw the structure when making the appeal site visit and in those circumstances a further visit was not necessary. There is no evidence before me to suggest that the Council failed to make proper investigations prior to the issue of the notice. The Council's approach was not unreasonable and did not result in the Appellant incurring unnecessary expense.

Conclusion

8. For the reasons given I find that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. I therefore conclude that the award of costs sought by Redcourt Ltd against the Council of the London Borough of Camden is not justified.

S. Prail

Inspector