

Cost Decision

Site visit made on 22 May 2015

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

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

Decision date: 21 July 2015

Costs application in relation to Appeal Ref: APP/X5210/C/14/2221240 Megaro Hotel, 23 – 27 Euston Road, London, NW1 2SD

- 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 Megaro Hotels 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 painting of the facades of the Megaro hotel with an advertisement.
 - The requirement of the notice is to remove the advertisement and make good any damage used (sic) to the building caused by the removal of the painted advertisement.
 - The period for compliance with the notice is three months.
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Decision

1. The application for an award of costs is refused

Reasons

2. The Planning Practice Guidance (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 the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance indicates that a planning authority is likely to be at risk of an award of costs where they fail to produce full and detailed evidence to substantiate their case or provide vague generalised or inaccurate assertions about a proposal's impact unsupported by objective analysis. The Guidance notes that costs applications may relate to events before the appeal proceedings.
4. The Appellant complains that the Council's case is inconsistent and incoherent and that it has shifted over time. They argue that the Council's Opinion relied upon by the Council is superficial, that the delegated officer report was produced late in the appeal proceedings and that the Council's appeal submissions did not provide a full explanation of the history and failed to identify concessions made in earlier correspondence. In particular they refer to failure by the Council to confirm views of particular officers. Further they point to the Council's consultation letter which described the alleged breach of planning control in wider terms than the enforcement notice. They argue the lack of clarity and specifically the content of the consultation letter required the Appellant to incur unnecessary expense in addressing a wide range of issues (including traffic safety).

5. The correspondence prior to the appeal proceedings is detailed and wide ranging. The Appellant was entitled to rely on the notice and the Council's statement of case as defining the issues in dispute on appeal. The detailed evidence produced by the Appellant in this appeal concerning pre appeal correspondence was not required as a result of unreasonable behaviour on the part of the Council. The Appellant has not shown that the Council's behaviour in the extensive discussions before the enforcement notice was issued was unreasonable or gave rise to unnecessary expense in the appeal process. The Council was entitled to investigate what it considered to be a breach of planning control. The Council did alter its approach as to how it intended to deal with the alleged breach of planning control. But I am not satisfied that that was unreasonable.
6. The notice in this case clearly stated the Council's position, namely that it considered the mural attacked by the notice to be an advertisement and that it did not accord with relevant development plan policies. The Council's statement, together with the attached counsel's opinion, in my view makes it clear what the Council's case is. The Council's position has been explained adequately. Ultimately, it is a matter of judgement as to whether the mural constitutes an 'advertisement' or not. Whilst I do not agree with the Council's interpretation that does not of itself make adequate behaviour unreasonable. They produced their reasoning to substantiate their case and did not behave unreasonably in this respect.
7. The failure by the Council to produce the report as an appeal document was unfortunate but it remedied this administrative error as soon as it was brought to its attention. This error does not constitute unreasonable behaviour. It did not cause the Appellant to incur unnecessary or wasted costs. The Appellant acknowledges that the report does not add any material substance to the Council's case, which was already set out in the Council's statement and the attached legal opinion. The policies on which the Council was relying are set out in the enforcement notice itself.
8. The Appellants have referred at length to their dealings with the Council. It is clear that the Council does not agree with the Appellant's version of those dealings. Even so, I am not satisfied that these matters reveal any unreasonable behaviour on the part of the Council. Nor am I satisfied that there is any substance in the Appellant's suggestion that the Council has only taken enforcement action in order to placate a local residents' group.
9. There is no dispute that the consultation letter erroneously repeated issues raised by complainants rather than identifying the Council's reasons for issuing the notice. But these erroneous issues were not repeated in the enforcement notice, the Council's appeal submissions or delegated report. It is quite clear that these matters were not part of the Council's case. The Appellant was under no obligation to address these wider issues.

Conclusion

10. For the reasons given I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has not been demonstrated. The application should be refused. There is no justification for a full or partial award.

S. Prail

Inspector