MR MAURICE NIXON

77 DRAYTON GARDENS, LONDON, SW10 9QZ

APP/K5600/C/16/3143934 & APP/K5600/X/15/3136227

SEPTEMBER 2016

APPELLANT'S APPLICATION FOR COSTS

Introduction

1. The Appellant makes an application for costs in relation to both appeals. The application is for a full award in each case, based on the substantive aspects of the Council's behaviour.

2. The application in each case is based on the unreasonable behaviour of the Council in the context of PPG ID 16. In relation to both appeals, reliance is placed on the following examples at paragraph 049:
   - Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
   - Failure to produce evidence to substantiate each reason for refusal on appeal.
   - Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
   - Not determining similar cases in a consistent manner.

3. In relation to the enforcement notice, reference is made to PPG ID 17b. Paragraph 003 advises that enforcement action is to be "proportionate". Paragraph 005 indicates that effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process…

4. The specific grounds of the applications are:

    (1) Reliance on the August 2014 change of position.

    (2) Failure to consider whether the activities complained of did, as a matter of fact and degree, constitute a change of use which was material.

    (3) The unreasonable issue and service of the enforcement notice.

    (4) Compliance with the development plan.

5. The principal reasons as to why the Council's behaviour is, in these respects, unreasonable are more fully set out in our Closing Submissions, incorporated here but not repeated.

6. As to (1), these appeals would not be necessary but for the complete reversal of the Council's established position in August 2014. Were it not for that change, it is clear that the LDC would have been granted, and the enforcement notice would not have been served. That change in position has been explored in evidence and commented on in Closing. In short, it was the antithesis of how planning policy and decisions should not be made. It was unreasonable behaviour, directly leading to the expenses incurred in these appeals.

7. As to the LDC appeal specifically, whether there is a material change of use must always be a question of fact and degree. The sort of planning considerations explored in evidence were clearly material to that decision. But they were ignored, in favour of a single, tenuous, aspect, the loss of a single dwelling unit. This was unreasonable behaviour.

8. As to (3), the chronology has been made clear. At the time of the enforcement notice, no harm to public amenity was being caused, and the integrity of the decision-making process was not offended, since the LDC appeal had been lodged. Far from being proportionate action, the service of the enforcement notice was disproportionate and unreasonable.

9. As to (4), the development plan position has been fully explained. There may have been issues around the compliance of proposals such as the appeal proposals, and their compliance with development plan policy, before 14 June 2016. On that date, however, the Council declared to the High Court that the amalgamation of two units (or even up to four units) complied with all aspects of the development plan. This was four months ago. During that time, the Council should have made clear to the Appellant that it now accepted that the development complied with planning policy, and withdrawn the enforcement notice. No such action was taken. Again, this was unreasonable behaviour.

C. LOCKHART-MUMMERY QC

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