
Costs Decision

Site visit made on 1 November 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 15 November 2016

Costs application in relation to Appeal Ref: APP/Y5420/C/16/3146620 Land at the rear of 108 Alexandra Road, London, N8 0LJ

- 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 Mr G Levy for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against an enforcement notice alleging the siting of a caravan and the erection of timber outbuildings/structures.
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Reasons

1. Before considering the application it is necessary to make clear what matters are for consideration. The Council's behaviour in relation to the planning application for the boutique hotel (LPA Ref: HGY/2016/0892) and the decision eventually reached is not before me as it is a separate matter from the enforcement appeal. My remit is limited to considering the matters relating to the issuing of the enforcement notice and the subsequent appeal.
2. I have considered the application in the light of the advice contained in the Government's Planning Practice Guidance (PPG) on such matters. This 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 or waste expense unnecessarily in the appeal process.
3. The statement supplied in support of the costs application is wide ranging but focuses on the failure of the Council to have regard to the historic use of the site and previous correspondence, the failure to refrain from taking enforcement action whilst matters were negotiated, including the submission of a planning application, and the issuing the notice for reasons that are unsubstantiated and without foundation. It is argued that for all of these reasons the Council has been shown to have acted unreasonably leading to wasted expense for the applicant. These claims concern both the procedural behaviour of the Council and their approach to the substantive issues relating to the planning merits of the development that has taken place. I have received no response from the Council countering the claims made.
4. Dealing firstly with the procedural matters I am concerned primarily with the actions of the Council that led to the issuing of the notice and their behaviour thereafter in opposing the appeal. The advice in paragraph 048 of the PPG is that local planning authorities should carry out adequate prior investigation before taking enforcement action to assess whether such action is needed and to ensure the notice is accurate. I am aware that there was a chain of e-mail correspondence between the Council and Mr Levy between December 2015 and

February 2016 immediately before the notice was issued. There is criticism from the applicant that the Council's assertions about the nature of the development shifted but it seems to me that this was in part due to the uncertainty regarding what the caravan and associated structures that had been built were to be used for. In this respect Mr Levy argues that the caravan is only stored on the land yet it is evident from the later planning application for the hotel and the hot tub and sauna construction that this is the use which is desired. I consider that this has placed the Council in some difficulty in interpreting what the site is being used for.

5. Nevertheless, from the information before me it does not appear that the Council carried out diligent investigation prior to issuing the notice. The e-mail responses to the applicant suggest that because planning permission would not be granted there would be no delay in issuing the notice even though the actual nature of the development was not precisely established. I accept that where a breach of planning control has occurred a local planning authority is not obliged to defer action on the basis that a planning application is about to be submitted but there remains a need to consider the extent of the harm and whether it merits immediate action. In this case the use as a hotel does not appear to have commenced when the notice was served and what was taking place was the storage of a caravan and the presence of some timber structures on land with a known history of commercial activity and storage use. I appreciate that the Council were responding to the complaint of a neighbour but this does not excuse the need to seek to establish the facts before proceeding with enforcement action and give careful consideration to the history of former use of the land and what bearing that has.
6. There is also the suggestion that the Council agreed not to issue the notice until the end of February but this was not followed as it was actually issued on the 15th of that month due to what the Council describes as "other influences". This claim has not been refuted by the Council. The applicant also claims that the planning application for the hotel use was submitted on 26 February 2016 within the time period that had originally been agreed with the Council on the 26 January 2016.
7. I have also had regard to the matter of what investigation was made by the Council concerning the history of the use of the site prior to issuing the notice. It seems that the Council have misinterpreted how the use that was actually taking place when the notice was issued compares materially with the historic use of the land for storage purposes. There is also the matter of the earlier e-mails to Mr Levy in December 2013 which indicated that parking a caravan on the land did not require planning permission. It is not clear that the Council sought to give a clear explanation of why this was no longer considered to be the case and why its presence now required planning permission.
8. I am also mindful of Mr Levy's unchallenged assertion that the two permissions from the early 1990's concerning the use of the land for storage purposes were requested from the Council but they were only eventually supplied well after the 3 day period that is listed in published guidelines. This amounts to a delay in providing necessary relevant information which is an example of unreasonable behaviour described in paragraph 047 of the PPG which could lead to a costs award.

9. In terms of the notice, I make the point in my Appeal Decision that the allegation only refers to the siting of the caravan and not its use. This is not necessarily fatal but leaves uncertainty in the mind of the recipient as to the nature of the actual breach. This uncertainty is then compounded in the Council's appeal statement by the sudden introduction of an argument that the caravan is in fact not a "caravan" as so defined but a building operation.
10. As is clear from my Appeal Decision I do not agree there is any substance to support this conclusion. It flies in the face of established legal authority on the definition of a caravan and as such is a type of behaviour which, according to the 5th bullet point of paragraph 049 of the PPG, can justify an award of costs. Moreover, such an argument is not consistent with the wording of the allegation which specifically refers to "the siting of a caravan" and not a building operation. It indicates a failure to properly consider the wording of the allegation before the notice was issued so that it reflects what is considered to be the nature of the development that has taken place. If this material change in the interpretation of what was considered to be the allegation was arrived at after the notice was issued then it should have been withdrawn and re-issued if expedient with a form of wording consistent with the case being argued. This inconsistency of approach amounts to unreasonable behaviour on the part of the Council being contrary to the advice in paragraph 048 of the PPG to ensure that the wording of a notice is accurate before it is issued.
11. Turning to the substance of the case I have not found the Council's arguments about poor design, harm due to visual impact and the effect on the outlook of neighbouring residents to be clearly made out and much of their case centres on the siting of the caravan which I have found to be a lawful storage use. There also appears to be a failure to take proper account of the historic use of the site and the buildings that previously existed on the land. This appears to have been given little or no weight despite its material significance when considering the merits of the development alleged.

Conclusions

12. In conclusion I find that there was a lack of diligent investigation prior to issuing the notice, muddled arguments over the nature of the development that is claimed to have taken place and a failure to provide important background documents regarding the historic use of the site in a timely manner. There also appears to have been unwillingness on the part of the Council to enter into dialogue before issuing the notice and a failure to adhere to a deadline previously given to submit a planning application. These are all procedural failings which taken together are considerable and have led to the applicant incurring unnecessary expense in pursuing the appeal. In addition the vague and generalised assertions on the matters of substance lead me to conclude that the Council have failed to properly substantiate the harm.
13. Taking these findings together, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Decision

14. The application for an award of costs is allowed in the terms set out below.

Costs Order

15. 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 the Council of the London Borough of Haringey shall pay to Mr G Levy, 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. The applicant is now invited to submit to Council of the London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

NP Freeman

INSPECTOR