



Costs Decision

Inquiry Held on 17 and 23 April 2018

Site visit made on 23 April 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 28 November 2018

Costs application in relation to Appeal Ref: APP/T5150/C/17/3176088 Oakington Manor Primary School, Oakington Manor Drive, Wembley HA9 6NF

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Oakington Manor Primary School for a full award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against an enforcement notice alleging *'Without planning permission, the material change of use from a school to a mixed use as a school and a car park (i.e. parking that is not ancillary to the use as a school).'*
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Decision

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

The submissions for Oakington Manor Primary School

2. The costs application was made in writing at the Inquiry. The main points raised are:
 - The Council issued the enforcement notice without any intention of giving consideration to representations it invited. The Council wrote to the appellant on 28 March 2017. The appellant responded on 10 April 2017 with information about the parking use. The enforcement notice was issued on 12 April 2017 and did not take account of the representations by the appellant.
 - The Council issued the enforcement notice without a significant investigation into the circumstances and without issuing a Planning Contravention Notice. The Council's Planning Enforcement Policy and Guidance in PPG16 recognises the importance of adequate investigation.
 - The Council issued the enforcement notice ignoring a Statement of Truth which provided evidence indicating immunity and which should have been investigated further.
 - The Council issued the enforcement notice with drafting which went beyond the purpose of the intended enforcement and was over enforcement.
 - The Council made unreasonable suppositions about the first date a football match was to be played at the new Wembley Stadium and/or

failed to engage in a timely manner in settling a Statement of Common Ground.

3. The following additional points were made orally.
 - The appellant does not consider the enforcement notice was essential in the letter of 10 May 2017 it offers levels of control. Offered to have discussions. The whole matter could have been avoided.
 - If the parking use had begun after April 2007 could have had a negotiated settlement as there was time.
 - Statement of Common Ground (SoCG): draft sent 14 February 2018 - Council officer on leave. Appellant chased the Council on 14 March 2018 and there was a response by the Council. Then there were some exchanges and substantial delay in receiving responses.

The response by the Council of the London Borough of Brent

4. The response was made orally at the inquiry.
5. The parking for off-site event use was essential for the school as a revenue stream and it could not be resolved by the Council informally. It was a live issue with time sensitivity and days could make a difference. The only way to resolve the issue was to issue an enforcement notice. As time was of the essence this reduced the level of investigation.
6. The Council had discretion to withdraw the enforcement notice but the evidence submitted prior to the Inquiry did not persuade it that this was the correct course of action. The Council considered it was more vulnerable to a costs application and award if the enforcement notice was withdrawn and therefore agreed to correction to the allegation. The original allegation was not perfectly worded. It was clearly necessary that wider use of the premises was resolved during the Inquiry and in the revised allegation.
7. The appellant suggested an acceptable level of use but there was no agreement. The Council stated certain levels of parking use were *de minimis* activities and were not development. The Council has no power over *de minimis* uses. The Council considers that parking for off-site events, that requires planning permission, is unacceptable at any level. Therefore there could be no negotiation of an acceptable level of parking for off-site events and it needed to be resolved through an Inquiry.
8. The appellant decided how it conducted its case and should not have needed to extrapolate evidence on numbers of cars. The appellant had those figures and chose not to put evidence of numbers of cars to the Council. The appellant chose to produce imprecise and ambiguous evidence and any extra time or money on the Inquiry was a result of the appellant's behaviour. The Inquiry was entirely necessary to get to the heart of the use and the evidence.
9. The Council recognises it has not been precise in its decision making and it should have been. However, what is evident is that it has bent over backwards for the school in issuing the wedding use lawful development certificate. The Council did that for the right reason. At that time the appellant did not provide any information on private parking as a material part of the mixed use of the school.

10. There was no public concern raised with the Council about parking for off-site events at new Wembley Stadium until 2016/176.
11. The Council has acted reasonably in issuing the enforcement notice and in the course of the appeal. If there has been any unreasonable behaviour this has not resulted in any unnecessary costs.

Reasons

12. The Planning Practice Guidance (PPG) 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.
13. The issue of parking for off-site events at the new Wembley Stadium was clearly time sensitive to the Council, as the new Wembley Stadium was officially opened on Saturday 19 May 2007. There was no mention of parking for off-site events by the appellant in submissions relating to the lawful development certificate application (LDC) in 2013. Moreover, while complaints to the Council about parking for off-site events at the school were only made in 2016 by local residents, the Council was alive to the facts of the time sensitivity of off-site parking associated with the new Wembley Stadium and the official opening of that facility in May 2007.
14. The burden of proof to demonstrate, on the balance of probabilities, that a development is lawful through the passage of time at the date on which an enforcement notice is issued is firmly on the appellant. The cases of both the Council and the appellant were not clear in written submissions. The complexity of the mixed use on the appeal site, the evidence relating to what and when uses began were all clarified at the Inquiry. The oral evidence was essential in reaching conclusions on what had taken place and that was through cross examination of the witnesses or as a result of direct questioning by me as the Inspector.
15. While the appellant considers that more investigations should have been carried out by the Council prior to issuing the enforcement notice I accept, in the circumstances of this case, that there were sufficient grounds for the Council to issue the notice. There is no requirement to serve a Planning Contravention Notice and a lack of one is not a matter of unreasonable behaviour. In my view, the Council carried out an adequate assessment of the development that had taken place and the complexity of the uses on the site and the lack of transparency in how information had been provided by the appellant in relation to the LDC application resulted in the service of the enforcement notice.
16. Clearly the pertinent issue in the ground (d) appeal was when the material change of use took place. It is a question of fact and degree in each case if or when this has happened. The oral evidence at the Inquiry was an important factor in explaining the differences in the character of the activities taking place and what had gone on previously. The determination of when the material change of use had taken place is ultimately a matter of judgement, based on the particular facts put before me as the Inspector. The Council were not unreasonable in its views; it simply gave the issues different weight than I did.

17. In relation to the SoCG while there was a delay, which is unfortunate, even if I were to find it unreasonable behaviour I do not accept it resulted in any unnecessary costs.
18. The need for the Inquiry to sit an additional day related to the clarifications necessary of the evidence given orally by the appellant's witnesses and as such was not unreasonable behaviour by the Council.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Hilda Higenbottam

Inspector