



Costs Decision

Site visit made on 14 August 2019

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 10th September 2019

Costs application in relation to Appeal Ref: APP/U5360/W/19/3219881 Basement and Ground Floor, 129 Stoke Newington High Street, Hackney, London, N16 0PH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Charles Bakker for a full award of costs against the Council of the London Borough of Hackney.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a proposal described as *"Use of the ground floor as use class A3 restaurant, with acoustic fencing around rear garden to allow external dining. Proposed hours for Premises: 10:00 to 00:00 (midnight) Mondays to Thursdays, 10:00 to 01:00 (1am) Fridays and Saturdays, and 12:00 to 00:00 (midnight) Sundays and Bank Holidays Proposed hours for garden use: 10:00 to 21:00 Mondays to Thursdays, 10:00 to 21:00 Fridays and Saturdays, and 12:00 to 21:00 Sundays and Bank Holidays"*.
-

Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that costs may 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 appellant submits that the Council has acted unreasonably in that it has, firstly, not provided relevant information in a timely manner, secondly, failed to engage in preparing a Statement of Common Ground (SoCG) and, thirdly, failed to provide evidence to support its grounds for refusal.
4. The appellant states that various documents and other information were not provided in a timely manner prior to the appeal being lodged. However, PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, and not for the period during the determination of the planning application¹. Once the appeal had been lodged, the Council then submitted a number of documents, including interested party representations made at application stage, after the relevant deadlines. The appellant was then granted an extension of time in relation to final comments and so had the opportunity to respond to these. PPG identifies a *"delay in providing*

¹ Paragraph: 033 Reference ID: 16-033-20140306

- information or other failure to adhere to deadlines*² as a type of behaviour that may lead to an award of costs. However, from the information before me, it is not clear that this has led to any unnecessary or wasted expense in this case, as the appellant would have had to respond to these documents in any event.
5. PPG also lists "*not completing a timely statement of common ground*"³ as a type of behaviour that may give rise to a substantive award of costs against a Local Planning Authority. However, it is unclear why a SoCG was not produced and no draft version has been submitted. It is therefore difficult to come to a clear view on this matter. In any case, the matters under dispute are unambiguous and it is not clear that any wasted expense has been incurred in this regard.
 6. It is asserted that the Council has not produced evidence in support of its grounds for refusal, particularly in relation to the appellant's Noise Impact Assessment (NIA). However, the Council has clear reservations about the effect of the development on neighbouring occupiers, and the enforceability of the suggested conditions. Whilst the Council proposed similar conditions in its Statement of Case, that appears to be a fallback position should the appeal be allowed. Moreover, a detailed response to the submitted NIA was provided by interested parties, which the appellant has had to address. I therefore have a detailed case before me in this regard. Given the Council's objections to the proposal it is also not clear to me that an appeal could have been avoided. The Council therefore did not prevent or delay development which should clearly have been permitted.
 7. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR

² Paragraph: 047 Reference ID: 16-047-20140306

³ Paragraph: 052 Reference ID: 16-052-20140306