
Costs Decision

Site visit made on 16 September 2019

by Timothy C King BA(Hons) MRTPI

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

Decision date: 24 January 2020

Costs application in relation to Appeal Ref: APP/U5360/C/18/3216388 49 Amhurst Park, Hackney, London N16 5DL

- 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 Amhurst Park Education and Donations for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against an enforcement notice issued by the Council against the use of the land as a school and various other associated operational developments.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant's case in this costs application is based on the consideration that it was not expedient for the Council to issue an enforcement notice as a planning application was being prepared to overcome the Council's concerns, of which the Council was aware. The background to this is that a planning permission granted in 2014 for the building's change of use along with associated operational development was implemented differently to that approved due to, as described by the Council, differences in size and massing. The Council says that an enforcement investigation case was opened in October 2017 and indicates that, in December 2017, warning letters were sent to the freeholder and the School, explaining that the Council would be looking to take formal enforcement action.
4. The applicant says that a scheme was subsequently submitted for comment in August 2018 yet the Council did not respond and, moreover, made no contact until the enforcement notice was received in October 2018. Later that month, following a prompt, the Council replied, apologising for not having earlier made comments as to the draft proposals. However, despite a request from the applicant, the enforcement notice was not withdrawn, thereby necessitating that an appeal be lodged. This was made in November 2018 and was followed up by a planning application being submitted to regularise matters which, in turn, was granted in January 2019.
5. The planning permission had the effect of regularising all matters, albeit subject to conditions, save for the tarmac hardstanding laid. The 2014

planning permission had been conditional that the proposed hard surfacing of the rear garden should comprise a 'no dig' porous design. However, the approved scheme was not implemented as had been approved, with tarmac having been laid, instead.

6. The applicant's initial arboricultural assessment made recommendations as to any works carried out within the various trees' root protection areas, including the spreading of an evenly graded substance which could be made up with granular, permeable fill, and also measures to avoid localised compaction of tree roots. The applicant's comments that the Council has not produced any evidence to show that the trees the subject of the TPO have been harmed by the tarmac hardstanding laid. However, in the same vein I have not been presented with any compelling evidence from the applicant that the hardstanding laid adhered to these recommendations.
7. From the representations of both main parties, due to the tarmac's make up and lack of permeability, I must agree with the Council as to the likelihood of the works having impacted the earth and caused some damage to the trees' roots. Accordingly, I would consider that the recommendations made to the applicant were not followed.
8. I find the Council's failure to comment on and respond to the draft submission made by the applicant in August 2018 as regrettable, especially given that this draft was not acknowledged by the Council until after the enforcement notice was issued. It is unclear why this occurred. However, notwithstanding this, given that the Council had sent out letters some eight months earlier informing the recipients of its intentions to enforce this would suggest that drawings reflecting the revised scheme, as implemented, were inordinately delayed. This would seem especially the case given that drawings already existed for the approved 2014 scheme, and these could have formed the basis of the revised plans, albeit subject to alteration.
9. From my reading of the Council's case it would seem that it considered the notice expedient as the change of use to a school and the associated extensions would, in the absence of a planning permission, let alone a planning permission, have not been subject to any conditions that might have been seen necessary and reasonable. However, once the application, subsequently submitted had been approved, a complication arose as the planning permission did not fully reflect what had been implemented on the ground, namely the hardstanding laid, with a condition imposed requiring that it be removed and replaced with a porous material.
10. I find that, in the circumstances, the Council was quite entitled to enforce against this breach which, in this regard, appears to fly in the face of the terms of the 2014 permission and also the previous advice of the applicant's own arboriculturalist. The applicant has not satisfactorily demonstrated otherwise.
11. The Council, once planning permission was again granted in January 2019, could have withdrawn the enforcement notice and issued a new streamlined notice, reflecting the changed planning position, but this would have caused further undue delay for which a new appeal would doubtless have ensued. I find this quite likely given the applicant's representations regarding the hardstanding laid. Although appeals on additional grounds were lodged, given that the Council had indicated that a new planning application should be submitted in an attempt to regularise matters, it would be reasonable that the

applicant could have expected that a retrospective application would have a reasonable chance of success, which proved to be the case. Further, the arguments on the remaining grounds would also have been well rehearsed in view of the obvious issues involved.

12. On this basis I can understand the Council's approach and, given the change in circumstances with the planning permission subsequently granted for the majority of the development, the appeal on ground (c) required only limited representations in support during the appeal process. Similarly, the appeals on grounds (f) and (g) would not have been onerous in light of this.
13. In assessing whether an award of costs is justified any unnecessary and wasted expense incurred must relate only to the appeal process. Given the planning history involved at this site, and the circumstances I have described, I am satisfied that the Council's approach in serving the enforcement notice, necessitating the appeal, and its subsequent refusal to withdraw the enforcement notice, fulfilled a particular planning purpose. Accordingly, I find no material conflict with relevant advice from the PPG.
14. I find, therefore, that no unreasonable behaviour has occurred and no award is made.

Timothy C King

INSPECTOR