



Costs Decision

Inquiry held on 7 – 10, 15 & 22 September & 22 October 2021

Site visits made on 7 & 23 September 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2022

Costs application in relation to Appeal A Ref: APP/U5360/C/19/3242430 Land at Brunswick and Columbia Wharf, 53-55 Laburnum Street, Hackney, London E2 8BD

- 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 the Council of the London Borough of Hackney for a full award of costs against Mr Russell Gray of Shiva Ltd.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission the erection of four (4) unauthorised structures at roof level, the installation of a platform and decking at roof level and the installation of fencing around the roof edge at 53 Laburnum Street.
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Costs application in relation to Appeal B Ref: APP/U5360/C/20/3260019 The Regent's Canal and Brunswick and Columbia Wharf, 53-55 Laburnum Street, Hackney, London E2 8BD

- 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 the Council of the London Borough of Hackney for a full award of costs against Mr Russell Gray of Shiva Ltd.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission the material change of use of the land to a mixed use – (A3) Restaurant and bar, (D1) the display of art installations (D2) cinema; and use to host social gatherings / as an events space (Sui generis use).
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Decision

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

The submissions for the Council of the London Borough of Hackney

2. A written submission was provided by the applicant.
3. The applicant's reply to the respondent was given orally at the Inquiry and is summarised in Annex B.

The response by Mr Russell Gray of Shiva Ltd

4. A written response was provided and additional comments were made orally at the Inquiry. These are summarised in Annex A.

Reasons

5. The 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.
6. The application is made on procedural and substantive grounds. First, in terms of procedural grounds, the Council states that the level of material produced by the appellant was disproportionate, with the Statement of Case running to some 2,079 pages.
7. The appellant accepted during the Inquiry that his evidence was "over-voluminous". But all files provided were visited during the Inquiry and afterwards during the preparation of my decisions. I sympathise with the Council on the resources needed to review them all. But the site has a long history and the case has raised novel and complex issues. Moreover, it is for the parties to determine how much evidence is needed to support their case and it is understandable that the appellant would seek to cover all possible arguments given the potential consequences of a dismissed appeal. In the context of the above, the volume of material submitted is understandable and its submission was not unreasonable.
8. A significant amount of Inquiry time (far more than was estimated) was used for examination-in-chief and cross-examination. But at times this was true of both main parties. Given the number of components of the breaches alleged, the number of discrete grounds of appeal pleaded and the unusual and complex nature of some of the issues raised, I do not consider the Inquiry time taken in this case as indicative of unreasonable behaviour.
9. As was clear during the Inquiry, some lines of questioning by the appellant did not assist me. But an appellant is entitled to carryout cross-examination themselves and given the long history on this site, I am satisfied there was good reason for him wanting to do so and that my interventions moved proceedings forward, when required.
10. The Council states that the presentation of the material is confused and confusing and that examples include annotations of documents. But this particular point is not further substantiated.
11. Other examples referred to are described as a constant attempt to mount unnecessary inquisition of the Council's actions, the verbose use of pejorative and inflammatory language, the liberal use of hyperbolic language, explicit and implicit suggestions of bad faith in officer conduct and the frequent unnecessary duplication of material. But I am not satisfied any of these have caused the Council to incur unnecessary or wasted expense.
12. The Council considers the appellant has consistently sought to be treated differently from any other planning applicant. But there is nothing inherently wrong with this and it is, in my view, understandable given the novel nature of the case and the relatively unique nature of the use and some of the structures concerned.
13. It is alleged that the appellant has hectored and demeaned officers of the Council. Whilst I do not condone such behaviour at all, I am not satisfied in this case that this has caused the Council to incur unnecessary or wasted expense.

14. My attention has been drawn to the appeal decision letter from 2017 (referred to in my appeal decision). But matters have moved on since that appeal, particularly in light of changes in planning policy and publication of the Conservation Area Review which specifically addresses the appeal site and post-dates that appeal decision.
15. The Council considers that it is unlikely the appeal would have been dealt with by an extended Inquiry process if the appellant had recognised that he could not reasonably pursue ground (d), a ground the Council describes as hopeless. But the appellant's ground (d) case was contingent on me agreeing with the appellant on ground (b) that components of the mixed use were not primary uses. Given this involved matters of planning judgement, in my view, the appellant was entitled to assume success on ground (b) and the consequential potential for success on ground (d).
16. In the context of the above, I do not accept that ground (d) was hopeless. Nor am I satisfied that an Inquiry was only necessary because of ground (d), given the complexity of some of the issues involved, given the substantial amount of public interest (reflected by the number of representations received) and given the unusual nature of some elements of the breaches of planning control alleged.
17. Having reviewed the draft Statement of Common Ground (SoCG), it is clear it contained information that the Council would not agree. But it was open to the Council to simply strike out any content that was not agreed. It would still have constituted a helpful document to some extent. So I do not accept the draft SoCG prepared represented unreasonable behaviour by the appellant.
18. The Council considers that the appellant sought to restrict and fetter the ability of the Council's team (ie their advocate) to visit the site prior to the Inquiry. But in my view, given the appeal timetable and how the site is used, the Council left it until relatively late in the process to seek to arrange access at a mutually convenient time, as part of the preparation for the Inquiry. So the appellant's behaviour was not necessarily unreasonable in this regard.
19. In any event, in light of the Council's 'Clarification to Enforcement Notice' document, dated 6 December 2020, it was necessary for me to undertake a site visit, accompanied by both main parties, prior to hearing any evidence at the Inquiry. This was because it transpired that it was necessary for me to check the accuracy of the breach of planning control alleged in the notice in Appeal B, as a consequence of the way the Council had drafted that notice.
20. This visit afforded the Council's advocate the opportunity to see the site before the Council's case was presented. I have no reason to believe the relevant Council officers did not have the opportunity to see all relevant parts of the appeal site, prior to issuing the notices, as part of the Council's prior investigation (drawing on their rights of entry under Part VII of the 1990 Act, if necessary). So in light of the above, I am satisfied the Council's team have not been disadvantaged.
21. In terms of substantive grounds, the application makes reference to an Appeal A ground (b) appeal. But there was no such appeal. Ground (b) was pleaded only in Appeal B.

22. In respect of Appeal A, the Council states that the ground (c) appeal is hopeless, that the structures are plainly not temporary and that there has been no proper or reasonable attempt to explain how permitted development rights might attach to them.
23. The clear assertions from the appellant's Summary Grounds of Appeal and Statements of Case, that permitted development rights are applicable to structures in Appeal A, have not been substantiated in closing submissions, even taking into account the 'sculpture park' analogy provided by the appellant and the *Dill*¹ case. However, in my view, this ground of appeal was easily disposed of.
24. The Council states that the Appeal A ground (a) appeal is hopeless and that it failed to proceed upon a proper or reasonable analysis. As I have allowed this appeal in part, I do not agree this is the case and, in any event, a ground (a) appeal involves matters of evaluative judgement on planning merits including material considerations as well as planning policies. So the appellant was entitled to argue their case using the material they did, notwithstanding any weaknesses it may have contained.
25. In respect of the Appeal A ground (f) appeal, as I have found in my appeal decision, no lesser steps were suggested by the appellant which would remedy the alleged breach of planning control. But, in my view, this ground of appeal was also easily disposed of.
26. In respect of the Appeal A ground (g) appeal, to a limited extent I have allowed this appeal and so I do not agree with the Council's suggestion that this appeal was without merit.
27. For Appeal B, the Council describes the ground (b), (c), (d), (a) and (f) appeals as hopeless. But the ground (b), (c), (d) and (a) cases put to me were all dependent on matters of judgement, including concepts such as whether components of the mixed use were primary or not and materiality. Whilst not all of the above grounds were successful, it does not mean they were hopeless.
28. As I allowed the Appeal B ground (a) appeal (for the reasons set out in my appeal decision), I do not agree it was hopeless.
29. In respect of the Appeal B ground (f) appeal, whilst this did not have to be considered in my appeal decision, no lesser steps were suggested by the appellant which would remedy the alleged breach of planning control. But, in my view, this ground of appeal was also easily disposed of.
30. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L Perkins

INSPECTOR

¹ *Dill v SSCLG & Stratford-on-Avon DC* [2020] UKSC 20

Annex A: Additional responses for Mr Russell Gray of Shiva Ltd

- The Council were not willing to meet the appellant post-issue of the notice or before.
- Pejorative language has not added to costs.
- Reasons for issuing the notice could have been met by conditions.
- The time taken could have been reduced.
- The Council's information technology failure did not prevent engagement by the Council.
- Cost incurring steps: proof preparation, time taken at the Inquiry, failure to discuss the case or engage over matters which could have helped reduce Inquiry time, eg conditions.
- The failure to discuss what mattered affected how long the Inquiry took.

Annex B: The applicant's reply to the respondent

- Paragraph 1: This is a mischaracterisation of the Council's case (regarding the *Beach*² case). The mixed use was not going on for the requisite period for ground (d) so this was hopeless.
- Paragraph 5: An Inquiry was necessary due to ground (d) being pleaded.
- Paragraph 5: No one has established that Council tax relief is on the same basis as planning, ie uninterrupted use.
- Paragraph 6: The draft SoCG was not an attempt to agree, it was pure advocacy and it was obvious the Council would not sign it.
- Paragraph 7: The Council expected lots of people at the venue, hence the room type.
- Paragraph 8: The site inspection was for the Council's advocate and this request was not honoured.
- Regarding disproportionality, the examples of unreasonable behaviour in the PPG are not exhaustive. Documentation was excessive, affected the time and expense used and prolonged the Inquiry.

² *Beach v SSETR & Runnymede BC* [2001] EWHC 381 (Admin)