



Costs Decisions

Inquiry Held on 25 September 2021

Site visit made on 27 November 2021

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Costs application in relation to Appeal Refs: APP/U5360 /C/20/3248773 and those listed below

104 - 108 Curtain Road, London EC2A 3AH

- 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 Timings Ltd for a partial award of costs against the Council of the London Borough of Hackney.
 - The inquiry was in connection with an appeal against an enforcement notices alleging the material change of use from a residential dwelling(C3) to use as a serviced apartment(C1).
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Procedural Matters

1. There are 24 units, each served a separate enforcement notice, with the appeal numbered as follows. Flat 1 – 3248773 **(1)**, Flat 2 – 3248785 **(2)**, Flat 2A – 3248782 **(3)**, Flat 3 – 3248786 **(4)**, Flat 4 – 3248797 **(5)**, Flat 5 – 3248794 **(6)**, Flat 6 – 3248799 **(7)**, Flat 7 – 3248800 **(8)**, Flat 8 – 3248801 **(9)**, Flat 9 – 3248803 **(10)**, Flat 9A – 3248804 **(11)**, Flat 10 – 3248806 **(12)**, Flat 11 – 3248807 **(13)**, Flat 12 – 3248808 **(14)**, Flat 13 – 3248810 **(15)**, Flat 14 – 3248811 **(16)**, Flat 15 – 3248815 **(17)**, Flat 16 – 3248812 **(18)**, Flat 16A – 3248818 **(19)**, Flat 17 – 3248816 **(20)**, Flat 18 – 3248814 **(21)**, Flat 19 – 3248817 **(22)**, Flat 20 – 3248819 **(23)** and Flat 21 – 3248825 **(24)**.

Decision

2. The application is allowed for a partial award of costs in the terms set out below.

The submissions for and response by Timings Ltd and the response by the Council of the London Borough of Hackney were presented in writing following the inquiry.

3. The application was made at the inquiry.

Reasons

4. The Planning Practice Guidance 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.

5. The reliance by the Council on the non-implementation of the 1994 permission was not made clear in its case. It was not a known issue right up until the cross examination of the appellant's witness on the first day of the inquiry.
6. The Council notes it did not realise the reliance placed on this permission by the appellant. However, the appellant had referred to this permission and reliance on it well before the first day of the inquiry and it should have been aware of its importance. It was referred to by the appellant in, amongst other things, the solicitor's letter in February 2021 and the statement of case relied on the letter of February 2021 and that the lawful use had remained hostel.
7. I note the difficulties associated with Covid, but it does not explain why this new aspect of the Council's case was not raised a day or two before the inquiry or on the morning of the inquiry. I simply do not accept Covid as a reason as the appellant's first reliance on the permission was flagged up in February, so there was plenty of time to investigate the file.
8. I asked at the time whether the Council would expect to find documentation relating to the conditions on the file, and it replied yes. However, when the appellant inspected the file there were many documents not there that might be expected to be there. There had also been many subsequent applications relating to the conditions related to the planning permission over many years, which the Council had dealt with, without raising the question of the status of the permission.
9. The appellant was in a difficult position, as it had not been the one to make the application. However, it did find a document that showed the conditions had been acted upon. The Council's reliance on plans produced at the same time was also questionable, given that they were not the approved drawings.
10. It is quite clear that this evidence was not looked for until later on in the appeal process and came as a significant surprise, delaying the inquiry and causing the appellant additional work.
11. The Council say that it did not delay the inquiry as the full 3 days were needed. However, closings were not able to be heard at the event, but were deferred to being delivered in writing. I consider that this did cause delay on the first day of the inquiry, required extra time in submissions, and involved the appellant in time addressing the issues. I conclude that overall, about 2 hours of inquiry time was lost on the implementation issue, together with the appellant's associated investigation time.
12. The Council say that it is for the appellant to prove implementation of the 1994 permission. That may be the case, but the point needs to be put fairly and squarely to them in the statement of case and/or proofs. It was not unreasonable for the appellant to assume the validity of the 1994 permission. I accept that as soon as the appellant did find appropriate documentation the case was withdrawn, which is to the Council's credit, but the event still caused delay and waste of time. The Council complain that the 1999 letter was disclosed late, but the appellant was not aware until the Council made its case that such a letter needed to be obtained from those who had it.
13. The Council also complain about the case of the appellant and the evidence adduced. It is up to the appellant what evidence to provide to support its case and which is readily available, and while the Council would like to have seen

various documents, it does not justify the introduction of late evidence. Also, the appellant says it does not have this information as the building has been sub-let for some time and those documents are with others.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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 Hackney shall pay to Timings Ltd the costs of the appeal proceedings relating to the implementation of the 1994 planning permission. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Dudley

Planning Inspector

