
Costs Decision

Site visit made on 9 March 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Costs application in relation to Appeal Ref: APP/U5360/C/20/3255528 86-100 Mare Street, Hackney, London E8 3SG

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 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 Simcha Green.
 - The appeal was against an enforcement notice alleging breaches of Conditions 1, 2 and 3 of planning permission Ref: APP/U5360/C/10/2142920 granted on 3 May 2012 for the erection of a six storey building (comprised of two detached six storey elements).
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. With respect to the appeal on ground (c) the Council contends that the appeal had no realistic possibility of being successful on the basis of the evidence submitted. Consequently, it is argued that it is a vexatious claim that the alleged matters in the enforcement notice do not constitute a breach of planning control.
4. The appellant has stated that planning permission is in place for the erection of a six storey building but there is a breach of the conditions and therefore the appropriate course of action is a not through planning enforcement but instead a breach of condition notice should have been issued. This has not been supported by facts or evidence. Planning permission reference APP/U5360/C/10/2142920 was approved retrospectively and therefore was immediately subject to the conditions attached to it on 3 May 2012. Consequently, the Council was perfectly entitled to issue the enforcement notice when it did.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

5. It is also clear to me that the Notice was submitted pursuant to s171A(1)(b) of the Act which relates to failing to comply with any condition or limitation subject to which planning permission has been granted. Consequently, the appellant's argument with respect to the course of action taken by the Council is inaccurate and unclear as well as being completely unsupported by evidence. As such his appeal on ground (c) had no realistic prospect of success.
6. With respect to the appeal on ground (f), the Council asserts that on the basis of the evidence submitted by the appellant there was no reasonable prospect of success. The Notice has been drafted to reflect the conditions imposed on the planning permission. The appellant's suggested lesser steps are to adhere to the conditions imposed in 2012; however, those conditions have already been breached and, although details to discharge the conditions have been submitted, the planning merits cannot be considered in the absence of an appeal on ground (a). There is no extant permission in place and no realistic fallback position.
7. In effect, under ground (f) the appellant is now seeking to achieve what is set out in conditions 1, 2 and 3 of the 2012 permission. Those conditions, and the enforcement notice, require the demolition of the buildings in the event of the requirements not being met. Since the notice requires the demolition of the two detached six-storey buildings to ground level and the removal of materials, debris, waste and equipment from the land, the purpose is to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In the absence of an appeal on ground (a), any lesser steps that would not remedy the breach of planning control cannot be accepted under ground (f). Therefore, in the absence of evidence the appeal on ground (f) had no realistic prospect of success.
8. The appellant's appeal on ground (g) argues that there are around 35 families living in the development and therefore a year is too short and 18 months is the right compliance period. The arguments are not supported by evidence and furthermore, the Council has concerns regarding the levels of occupancy within the buildings. In the absence of clear arguments and supporting evidence I agree with the Council's comments that the appeal on ground (g) has no realistic prospect of success.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mr Simcha Green shall pay to London Borough of Hackney, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr Simcha Green, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips INSPECTOR