



Costs Decision

Site visit made on 29 July 2021

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2022

**Costs application in relation to Appeals A and B:
APP/U5360/C/20/3256384 and APP/U5360/C/20/3256385
Land at 17 Manor Road, Hackney, London N16 5BQ**

- The application is made by the Council of the London Borough of Hackney for a partial award of costs against Messrs the Directors of Yeshiva Gedolah Torah Veyirah Ltd and Messrs Wiseheights Ltd.
 - The application is made under sections 174 and 322, and Schedule 6 of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972.
 - The appeal was against an enforcement notice alleging that there had been a failure to comply with a condition imposed on a planning permission.
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Decision

1. The application for a partial award of costs is refused.

Preliminary Matters

2. The costs application was submitted in writing and is thus a matter of record. The appellant responded to the application but the Council did not take the opportunity afforded to make final comments.
3. The Planning Practice Guidance (PPG) provides that where a party to a planning proceeding has behaved unreasonably and, in so doing, directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs¹.
4. The enforcement notice alleged that there had been a failure to comply with condition 1) imposed on the planning permission which was granted on appeal for 'the erection of four single storey portacabins [sic] structures' on 28 April 2015². Condition 1) limited the '2015 permission' to a period of three years and required that the portacabins be removed by the end of that period.
5. The Council seeks an award of costs in respect of those that they incurred in contesting Appeals A and B on grounds (c), (d), (f) and (g). They do not seek any award in respect of the costs they incurred in contesting ground (a).

Reasons

6. The Council's case is, in short, that it was unreasonable for the appellants to plead grounds (c), (d), (f) and (g) because those grounds had no realistic prospects of success. The Council say that the appellants caused them to incur unnecessary expense in contesting grounds of appeal that were bound to fail.

¹ PPG paragraph ref ID: 16-028-20140306

² Appeal ref: APP/U5360/C/14/2223622

Grounds (c) and (d)

7. In my appeal decision letter, I not only found against the appellants on grounds (c) and (d), but also that they had misunderstood what the notice alleges and what cases they could even make. The appellants failed to appreciate that the questions were whether the alleged breach of condition – and not the erection of portacabins – constituted a breach of planning control or was immune from enforcement action through the passage of time.
8. However, it does not follow that the appellants were being ‘vexatious’ in pleading grounds (c) or (d). I could not reach that conclusion when their arguments were in fact relevant to ground (c). Despite being imprecisely put, the appellants’ submissions questioned whether condition 1) was capable of being enforced. The Council did not expressly recognise that an enforcement notice which alleges that there has been non-compliance with a condition can be appealed on ground (c) on the basis that the condition is not valid.
9. I agreed with the Council that the 2015 permission had been implemented, but not simply because it had been granted retrospectively. The Council also ought to have considered whether the permission was necessary before suggesting that it ‘supersedes any previous...immunity period’. They were right that the appellants were stymied by their failure to appeal the 2014 notice on ground (d), but they did not explain why that was so or make any reference to s285 of the Town and Country Planning Act 1990.
10. I consider that it was not unreasonable for the appellants to appeal the notice on grounds (c) or (d), and so the Council did not incur unnecessary expense in contesting those grounds.

Grounds (f) and (g)

11. Since I allowed Appeal A on ground (a), I did not determine the ground (f) or (g) appeals. I shall not speculate here as to what decisions I might have made.
12. However, I am satisfied that the appellants did not behave unreasonably in pleading ground (f) because their case that Cabin 1 should be excluded from the requirements of the notice was consistent with their earlier arguments that Cabin 1 is lawful. Indeed, the Council noted that the ground (f) appeal related to what the appellants had said for ground (d). Since I have found that the appellants did not act unreasonably in pleading grounds (c) or (d), the same must apply to ground (f).
13. The appellants’ case for ground (g) was that the period for compliance with the requirements of the notice should be extended from three months to three years. While the previous Inspector gave a clear opinion that three years is too long for a compliance period, she did not say that could never be allowed, and it would have been necessary for me to determine ground (g) on the facts and circumstances as exist now.
14. Moreover, it would have been open to me to extend the period for compliance so that it is less than three years but still longer than three months³. It is not unusual for ground (g) to succeed to a limited extent. It was not unreasonable for the appellants to plead ground (g) in principle or to do so by asking for the time that they considered necessary.

³ Just as I granted temporary permission for less than three years.

Conclusion

15. The PPG states that 'an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding'⁴. It does not say, however, that costs will always be awarded in such a situation.
16. Even if it could be said that grounds (c), (d), (f) or (g) had 'no reasonable prospect' in this case, I am satisfied that the appellants did not act vexatiously. Their arguments were more complicated than perhaps they or the Council appreciated, and that is not surprising when the history of the site and current circumstances of the yeshiva are complicated too.
17. I have had regard to all other matters raised and conclude that the appellants did not behave unreasonably in appealing the notice on grounds (c), (d), (f) or (g). The Council did not incur unnecessary expense in contesting those grounds. The application for a partial award of costs is refused.

Jean Russell

INSPECTOR

⁴ PPG paragraph ref ID:16-053-20140306