



Costs Decision

Site visit made on 22 May 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Costs application in relation to Appeal Ref: APP/U5360/W/22/3305433 362-364 Old Street, London, EC1V 9LT

- 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 Sefton Commercial Ltd and Neon City Ltd for a full award of costs against the Council of the London Borough of Hackney.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for installation of a new passenger lift to internal courtyard without complying with a condition attached to planning permission Ref 2021/0567, dated 27 September 2021.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The PPG says that awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. This costs application is made on both grounds.
4. In respect of procedural matters, paragraph 047 of the PPG says that *local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include: lack of co-operation with the other party or parties delay in providing information or other failure to adhere to deadlines.* The Council provided no appeal statement, though did include supporting policies, suggested conditions and a conservation area map. However, the Council has failed to comment on any of the applicant's submitted evidence and has not confirmed its position on the original application or the appeal.
5. Paragraph 48 of the PPG says that *if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.* It goes on to add that *if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better*

communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

6. Paragraph 049 of the PPG says that *local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications*. One scenario where the above might occur is where the lack of provision of reasonably requested information and a more helpful approach would probably have resulted in the appeal being avoided altogether.
7. Based on the information before me, no such explanations have been provided and the applicant clearly attempted on a number of occasions to communicate with the Council, but to no avail. Therefore, there were no substantive reasons to justify delaying the determination of the application and better communication with the applicant would have most likely enabled the appeal to have been avoided altogether. This amounts to unreasonable behaviour by the Council, which has led to the unnecessary wasted expense of the applicant having to pay an agent to prepare and submit an appeal and prepare this application for costs.
8. The applicant's Unilateral Undertaking (UU) was submitted at a late stage in the appeal process, and whilst the Council did not confirm its monitoring fee following the emails sent by the applicant, these did come in on the 12th and 25th of April 2023. I have not been provided with any substantive evidence to demonstrate monitoring fees are not publicly available or any particular reason why the UU could not have been submitted alongside the application from the outset. Additionally, I have found that the development would not harm the character or appearance of the South Shoreditch Conservation Area regardless of whether or not a UU were in place. Although the Council displayed unreasonable behaviour by not responding to the applicant's emails, I do not find that any unnecessary or wasted expense has been incurred in this regard.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

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 the Council of the London Borough of Hackney shall pay to Sefton Commercial Ltd and Neon City Ltd, the costs of the appeal proceedings described in the heading of this decision excluding those costs incurred in respect of the UU; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

J Hills

INSPECTOR