
Costs Decision

Site visit made on 17 October 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Costs application in relation to Appeal Ref: APP/U5360/C/22/3305987 Unit 10, Fairweather Wharf, 10 Timberwharf Road, London N16 6DB

- 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 the Council of the London Borough of Hackney for an award of costs against Yeshiva Lepeitim.
 - The appeal was against the Council's decision to issue an enforcement notice against the use of the land and building as a Class F1(1) use involving a place of public worship or religious instruction.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. This costs application is made by the Council in respect of both procedural and substantive grounds; the former relating to the appellant failing to initiate and draw up a Statement of Common Ground, and the latter due to the appellant's deemed planning application (DPA) arising from the ground (a) appeal lodged. The substance of the ground (b) appeal was also criticised.
4. The application for an award of costs had been prepared before the Hearing but, due to the appellant's decision to withdraw both the ground (b) and ground (f) appeals during the Hearing itself, the procedural grounds identified by the Council were effectively widened.
5. Dealing with the substantive element first the Council is of the view that the appellant was, in effect, re-running the previous s78 appeal which was unsuccessful. It certainly appeared to me that the appellant was looking to have 'a second bite of the cherry' in arguing against the previous Inspector's consideration that the change of use required for the appellant to demonstrate that the appeal premises had been robustly marketed.
6. However, to be fair, the previous Inspector had decided not to accept the appellant's evidence as to noise emissions at the previous Hearing due to the report being submitted late and the Council not having had the chance to examine its findings. Also, to aid access to the premises a new pedestrian gate had been installed off Maple Close.

7. Admittedly, in the event, neither of the above made any appreciable difference in planning terms but it still required that the evidence be explored, and on this basis it was perfectly reasonable for the DPA to be heard.
8. Turning to the procedural aspects the ground (b) appeal, that the breach of planning control had not occurred as a matter of fact, was hopeless and should not have been advanced in the first place. If its inclusion had been an error then this ground should have been rectified and the ground withdrawn before the Hearing. That said, the lack of substance here was easily rebutted. The ground (f) appeal, also withdrawn on the day, had little to support it and, similarly, was rebutted without difficulty. In this respect I am not convinced that the Council incurred unnecessary or wasted expense in responding to the appellant's case.
9. As regards the Statement of Common Ground the appellant gave no real explanation as to why it had not been prepared, and obviously the Council should not have had to initiate this work in order to have the document ready for the Hearing. Indeed, this is contrary to the Appeal Regulations. However, given that the issues had already been largely rehearsed in the previous appeal the work involved would not have been onerous. Certainly, the fact it wasn't produced until the Hearing did not affect my understanding of the case.
10. I do sympathise with the Council in that the appellant was at fault on the above matters but it is only because the work undertaken was limited and straightforward that I do not feel that an award of costs is itself warranted here. The appeal as a whole was necessary for the reasons I have mentioned and I am satisfied that the Hearing proved the appropriate means given the issues.
11. Accordingly, for the reasons given above unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
12. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR