
Costs Decision

Hearing Held on 14 June 2023

Site visit made on 15 June 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Costs application in relation to Appeal Ref: APP/U5360/X/22/3309275 Brunswick and Columbia Wharf, 53-55 Laburnum Street, Hackney E2 8BD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Russell Gray of Shiva Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for E(g)/F1(b).
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Decision

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

The submissions for Mr Russell Gray of Shiva Ltd

2. The Appellant claimed there had long been a degree of antipathy between the parties. Decisions, when made, were often subject to delays. The Council's actions were designed to delay and frustrate his plans. The handling of the application that formed the subject of the appeal was a case in point, as this was not determined and an appeal against non-determination had to be made. It was delayed by technical arguments, such as the application being made under the wrong provision of the 1990 Act.
3. The Council did not subsequently provide any information on what its reservations were and how Mr Gray might obtain a certificate. It did not set out the reasons why it would not issue a certificate until the appeal was made. Only then, 15 months later, was he given the information needed. He had, he said, made it clear that he was not talking about the two flats in the building when making his application for a certificate. He was still struggling to get clarity on the Council's position. The Council's actions were unreasonable and justified an award of full costs.

The response by the Council of the London Borough of Hackney

4. The Council began by saying that it was not always responsible for the delays and there were other mitigating factors, such as staffing issues. It strove to make decisions in good faith, and delays were not intentional.
5. The application for costs has to relate to the Council's actions in respect of the appeal and the handling of the application. Actions relating to other planning applications cannot be taken into account. The Appellant's concerns about the Council's actions elsewhere would need to be taken up with the Local Government Ombudsman.

6. In this case, the onus lies with the Appellant to make his case, and he did not. Although the appeal arose from the failure to determine the application, the Council would have refused the application for the reasons that it gave in the appeal, so the appeal would have occurred in any event.

Reasons

7. 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. There are, therefore, two tests – that unreasonable behaviour has occurred, and that this has led to unnecessary or wasted expense.
8. The Council is right in its assertion that the costs claim could only relate to the proposal for the certificate that formed the subject of the appeal. In any event, I was given no evidence of examples where Mr Gray felt that the Council had behaved unreasonably.
9. Where, as here, a local planning authority fails to determine an application within 56 days, section 78 of the 1990 Act allows for an appeal to be lodged. The Council gave only generalised reasons for its failure to determine the application within 56 days, and the Appellant was obliged to go to appeal to get a formal decision on the matter. The Council did not dispute Mr Gray's submission that he could not elicit any further information on the Council's position until it made its appeal submissions. In this case, I find that the failure to determine the application amounted to unreasonable behaviour.
10. However, the evidence shows that the Council would have refused the application in any event, and it provided robust reasoning to substantiate its position at the Hearing. Furthermore, the Appellant had made it clear that he did not agree that the two flats in the building and other uses allowed in the previous enforcement Inquiry were part of the lawful use of the land. I found his position, that the planning permission granted retrospectively at that Inquiry was "foisted" upon him and that it represented an "artificial construction of the lawful uses", was wrong. He did not recognise the two flats as being part of the planning unit, nor that these and other uses identified by the enforcement Inquiry Inspector were the lawful use of the land. They were.
11. Taking these positions into account, I find that an appeal was inevitable. Therefore, the Council's behaviour that led to the appeal did not lead to the Appellant incurring unnecessary or wasted expense. In addition, I did not find that the evidence pointed to a concerted effort on behalf of the Council to delay and frustrate the Appellant, neither did its action amount to an 'attack on art' as was claimed in the Hearing.
12. For the above reasons, I find that the Council's failure to determine the application amounted to unreasonable behaviour. However, it did not result in unnecessary or wasted expense, as described in the Planning Practice Guidance.

Roy Curnow

Inspector