



Costs Decision

Inquiry held on 12 December 2023

Site visit made on 12 December 2023

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1st February 2024

Costs application in relation to Appeal Ref: APP/U5360/C/22/3304078 16-18 Rossendale Street, Hackney, London, E5 9BW

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by London Borough of Hackney for a full award of costs against Mr Ben Weberman.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land to a mixed-use comprising storage & distribution and residential.
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Decision

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

Submissions for Council

2. The costs application was made orally at the inquiry. It is based on alleged substantive and procedural unreasonable behaviour by the respondent, which has led to unnecessary or wasted expense in the appeals process.
3. The Council claims there was a distinct lack of evidence put forward by the respondent to substantiate their case. Due to the brevity of the points raised in the respondent's written evidence, it is argued that the Council had to prepare for all eventualities in defending their case. New evidence was also drawn-out during cross-examination which was not included in the respondent's Statement of Case, nor Proofs of Evidence. The Council contends that these factors have led to unnecessary and wasted expense.

Response by Mr Ben Weberman

4. The response was made orally at the inquiry. The respondent said that the whole purpose of the inquiry is to allow oral evidence, and it was felt this would be the most effective way of presenting their case. The respondent also highlighted they are not planning professionals, but had tried their best to adhere to the appeals process, noting that English was their second language. Other issues pertaining to the address cited in the enforcement notice (EN) and the legitimacy of photographic evidence were also raised, although these issues are of greater relevance to the respondent's own costs application.

Reasons

5. 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. In

particular, the PPG says that an appellant may be at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

6. In this case, there are two separate components to the alleged mixed-use, the first being a waste management operation and the second being the stationing of a caravan for residential use.
7. The respondent's Statement of Case, which was submitted late, was very brief in detail. Whilst it essentially said the site's use had never changed from a vehicle servicing and repair business, little detail to substantiate this claim was provided. The Proofs of Evidence, which should outline the evidence to be relied on at inquiry, added very little detail to these claims.
8. In terms of the alleged waste management operation, there was a significant amount of information provided by the Council pertaining to the use of the appeal site, including numerous dated photographs. In itself, this evidence points overwhelmingly towards the appeal site being used for the parking of waste vehicles, in conjunction with the respondent's waste management company. Despite the respondent's contention, there is nothing to suggest these photos have been doctored in any way.
9. With the exception of oral testimony during the inquiry, there was a complete lack of evidence presented by the respondent to substantiate their claim that a vehicle repair and servicing business has continued to subsist at the appeal site. This is despite the respondent indicating that servicing records, staff records and invoices for servicing and repairs are kept by the company. If this evidence exists, it is difficult to understand why it was not produced by the respondent to support his case, particularly given the burden of proof rests with him.
10. Given the strength of the Council's evidence, and given the complete lack of documentary evidence presented by the respondent, I am left to conclude that the appeal on grounds (b) and (d) had no reasonable prospect of success, at least insofar as these grounds relate to the waste management operation. This means the time and expense which the Council incurred in defending these grounds of appeal were ultimately unnecessary, and therefore wasted.
11. Moreover, given the scant evidence produced by the respondent in advance of the inquiry, the Council would have needed to have been especially comprehensive and robust in their preparation. By way of example, the Council carried out a thorough review of the planning history of the appeal site and put forward detailed arguments relating to abandonment and possible nil use of the site. Whilst this information could potentially have been relevant, it ultimately made little difference to the substance of the respondent's case. Notwithstanding my findings that the grounds of appeal had no reasonable prospect of success, such time and expense in the Council's preparation could also have been avoided if the respondent's case was made clearer from the outset.
12. Notwithstanding these conclusions, I consider that the position is less clear insofar as the grounds of appeal relate to the stationing of a caravan for residential use. Whilst I have ultimately sided with the Council on this issue, on the available evidence, I am not persuaded that there was no reasonable

prospect of success on this aspect of the allegation, particularly in terms of the ground (b) appeal.

13. Although English may not be the respondent's first language, the inquiry demonstrated that both the respondent and their agent had a good grasp of the English language. This factor would therefore not justify the unreasonable behaviour identified above.
14. In conclusion, I consider that unreasonable behaviour resulting in unnecessary or wasted expense has occurred, but only insofar as the grounds of appeal relate to use of the appeal site for a waste management operation. A partial award of costs is therefore warranted.

Costs Order

15. 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 Ben Weberman shall pay to London Borough of Hackney, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in defending the grounds of appeal insofar as they relate to the alleged use of the appeal site for a waste management operation; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Mr Ben Weberman, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

James Blackwell

INSPECTOR