



Costs Decision

Inquiry held on 12 December 2023

Site visit made on 12 December 2023

by 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 8TA

- 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 Mr Ben Weberman for a full award of costs against London Borough of Hackney.
 - 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 refused.

Submissions for Mr Ben Weberman

2. The costs application was made orally at the inquiry. The applicant said that discrepancies with the address cited in the enforcement notice (EN) and the site notice led to wasted time and expense, as the applicant was unable to correctly identify the site. The applicant also alleged that the reference to "storage & distribution" in the allegation led to wasted time and expense, as no distribution use has ever taken place within the appeal site.

Response by Council

3. The Council's response was also made orally at the inquiry. The Council highlighted that they were entitled to rely on Land Registry documents, which confirmed the street address cited in the EN was accurate. They also said "storage & distribution" referred to the B8 use class which was relevant to the overall use of the site, but did not necessarily mean any element of distribution was alleged.

Reasons

4. 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.
5. As set out in the appeal decision, I have found that the applicant was not misled in terms of the address cited in the EN, and that they should have been able to correctly identify the site from the address cited and the attached enforcement plan. With the exception of the postcode, the address was largely accurate, and the discrepancies highlighted would not render the EN a nullity, a

position supported in caselaw. This mistake would therefore not constitute unreasonable behaviour on the part of the Council.

6. In terms of the language used in the allegation, "storage & distribution" is followed by "(B8)", which is clearly a reference to the B8 use class. For a use to fall within this use class, it would not be necessary for it to encompass both elements of storage and distribution, but could instead encompass either a storage use or (*my emphasis*) a distribution use.
7. Given the alleged breach of planning control concerned the storage of waste vehicles, it was not factually incorrect for the Council to refer to this as a storage & distribution (B8) use (notwithstanding that a mixed use is a *sui generis* use in its own right). Indeed, when the allegation is read alongside the Council's Statement of Case and Proof of Evidence, it should have been reasonably clear to the applicant that distribution from the appeal site did not form a material part of the Council's case. Moreover, as the Council did not dispute this point at inquiry, the applicant was able to dispense with the issue very quickly.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

James Blackwell

INSPECTOR