
Costs Decision

Inquiry Held on 13,14,15 and 19 February 2024

Site visit made on 15 February 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 March 2024

Costs application in relation to Appeal Ref: APP/U5360/C/23/3316187 Land at 10 Wilderton Road, Hackney, London N16 5QZ

- 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 the Council of the London Borough of Hackney for a partial award of costs against Yakov Khubini.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use from dwellinghouse to a mixed use comprising synagogue and a residential maisonette.
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Decision

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

The submissions for the London Borough of Hackney

2. The Council submits that a partial award of costs is justified for both procedural and substantive reasons as it was unreasonable for the Appellant to pursue and appeal on grounds (c), (d) and (f). Grounds (c) and (f) were introduced at a late stage in his Statement of Case (SOC), which required the Council to have additional time and incur expense in responding to them. The introduction of those grounds prolonged the proceedings and inquiry length.
3. The suggestion that the Council had granted planning permission for the development was manifestly inaccurate and untrue. The appeals on ground (c), (d) and (f) had no reasonable prospect of succeeding. Furthermore, with respect to the ground (f) appeal, the Appellant presented no alternatives to the steps set out in the Enforcement Notice and thus failed to substantiate his case.
4. The Appellant's behaviour in respect of those grounds was unreasonable and incurred the Council in unnecessary and wasted expense.

The response by Mr Yakov Khubini

5. The Appellant submits that it was not unreasonable for him to take the view that planning permission had been granted for the development based on the information on the plans which formed part of the planning permission for an extension to his property.¹ That permission was granted after the initial appeal

¹ LPA Ref: 2022/2647

was made, and therefore necessitated the late introduction of grounds (c) and (f).

6. In support of his appeal on ground (d), the Appellant believes he produced evidence and relied on witnesses who appeared at the Inquiry to show continued use from 2011. A case was provided to support the appeal on ground (f), e.g., a fallback, and not all the requirements are necessary to remedy the breach. The Appellant does not therefore believe that he behaved unreasonably.

Reasons

7. 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.
8. PPG advises that an appellant is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. It advises that the right of appeal should be exercised in a reasonable manner and the appellant is at risk of an award of costs if the appeal has no reasonable prospect of succeeding. The onus of proof on matters of fact is on the appellant.²
9. In relation to procedural matters, PPG advises that appellants are required to behave reasonably in relation to procedural matters on appeal. Examples of unreasonable behaviour which may result in an award of costs include, introduction of fresh and substantial evidence at a late stage necessitating an adjournment or extra expense in preparatory work that would not otherwise have arisen.³
10. When the appeal was initially submitted it was made on grounds (b) and (d). However, when the Appellant submitted their SOC he requested the introduction of grounds (c) and (f). He advised that this was because they had latterly received a planning permission in relation to the property which they considered to be relevant, whilst also believing there to be some overlap between grounds (b) and ground (c). The Planning Inspectorate accepted those additional grounds, and the Council were given time to respond to them.
11. The PPG grants a right of appeal against local planning authority's decisions, including against an enforcement notice. The Appellant gave a reasonable explanation for the introduction of those additional grounds and the Council had time to respond. Whether the grounds were pleaded at initial appeal stage or during the SOC, the Council would have needed to respond to them. The late introduction of those grounds did not therefore incur the Council any additional or wasted expense in the appeal process.
12. Although the Council believe ground (c) had no reasonable prospect of succeeding, it can be seen from my decision that the appeal succeeded on grounds (b) and (c). As identified by the Appellant, there is some overlap between those grounds. Whether a material change of use and thus whether an act of development has occurred is a matter of planning judgement. It was therefore not unreasonable for the Appellant to make an appeal on that basis.

² PPG, Paragraph: 053 Reference ID: 16-052-20140306

³ PPG, Paragraph: 052 Reference ID: 16-052-20140306

His case on ground (c) was also made on his belief that planning permission had been granted for the development. Whilst I did not need to address that point, I am mindful that the Appellant was not represented by a professional planning expert. His case on ground (c) was based on his assertion that he was utilising the room as a prayer room for his extended family, and the Council had approved plans which showed that this room was to be used as a prayer room in his home. Notwithstanding the merits of that assertion, in these circumstances, I do not consider that it was unreasonable for him to make that case.

13. In respect of the appeal on ground (d), the Appellant addressed this ground in his SOC, and proofs of evidence were provided from five witnesses to support his case. Whilst only three of those witnesses appeared at the Inquiry, those witnesses spoke to their proofs and gave evidence under solemn affirmation. The Appellant produced evidence to substantiate this ground and had a right to be heard at Inquiry on that basis.
14. The Appellant's SOC set out why he considered the requirements of the notice to be excessive, including why he considered the requirement to remove fixtures and fittings which he associated with the use of property as a dwelling to be excessive. Notwithstanding the merits of his case, he set out clearly his concerns and what he believed to be excessive in his understanding of the requirements of the notice. That was not unreasonable.
15. For the reasons given above, I find that unreasonable behaviour by the Appellant has not been demonstrated.

Elizabeth Pleasant

INSPECTOR