



Costs Decision

Site visit made on 3 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Costs application in relation to Appeal Ref: APP/R5510/C/24/3337391 Chevron House, 346 Long Lane, Hillingdon UB10 9PF

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Adam Finance Ltd for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against an enforcement notice alleging without planning permission, the installation of hardstanding to the front elevations of the property.
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Decision

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

Reasons

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (PPG) chapter on appeals advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal. The applicant sought a full award of their costs, on both procedural and substantive grounds. The application was made in writing, in accordance with the PPG at paragraph 035.
3. Summarised, the applicant's case on procedural grounds is that the issuing of the enforcement notice came as a surprise, as they were initially advised that the Council's investigation had been discontinued. Issuing the notice over a year later without prior engagement with the applicant, the Council had failed to follow the approach set out in its enforcement plan and in the PPG chapter on enforcement. The applicant had been open to cooperation to resolve matters, which could have led to the notice not being issued. The Council's investigation also failed to identify all persons with a material interest in the appeal property, resulting in a number of such persons not being served with copies of the notice as required.
4. The substantive grounds for the application are in summary that the Council failed to explain why, in the absence of any material change in circumstances since the initial investigation had concluded otherwise, the hardstanding caused the planning harm identified in the notice. There is a fallback position of permitted development rights. The Council's approach was inconsistent with its earlier position and failed to show why the taking of enforcement action was now expedient, whilst the reasons for issuing the notice were not drafted with the necessary accuracy.

5. The Council is required to behave reasonably in relation to procedural matters at an appeal, for example by complying with the requirements and deadlines of the process. At paragraph 047, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the procedures in an appeal. These include lack of co-operation with the other party or parties, delay in providing information or other failure to adhere to deadlines, failing to provide relevant information within statutory time limits resulting in an enforcement notice being quashed without the issues on appeal being determined, withdrawing an enforcement notice without good reason and providing information that is shown to be manifestly inaccurate or untrue.
6. Paragraph 048 of the PPG stresses that a Council must carry out an adequate investigation prior to issuing an enforcement notice. A Council will be at risk of an award of costs being made if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.
7. At paragraph 049, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the substance of the matter at appeal. These include failing to produce evidence to substantiate each reason for refusal on appeal and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, acting contrary to or not following well-established case law, not determining similar cases in a similar manner, not reviewing their case promptly following the lodging of an appeal and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
8. A Council Officer wrote to the applicant's representative in September 2022, informing them that the enforcement investigation into the hardstanding had been discontinued. However, I was also supplied with a copy of correspondence from the Council addressed to the occupier of the property, dated January 2023. This indicates that the Council did in fact attempt to continue dialogue with the applicant following conclusion of the initial investigation. This correspondence offered further time to remedy the matter before formal action was considered. Although the correspondence appears to not have been received by the applicant, that could be due to any number of reasons. It does not mean that no such correspondence was sent. Accordingly, I am satisfied that the Council did not issue the notice without first seeking to re-engage with the applicant.
9. The Council could also have tried other methods of contacting the applicant or their representative to explain that the hardstanding was still, in fact, of ongoing concern from an enforcement perspective, for example by telephone or by visiting the property. Even so, that not being done is perhaps understandable given the likely significant resourcing constraints facing the Council.
10. Only issuing the notice some months following the latest correspondence is also more likely to reflect limits on resources and other priorities, rather than signifying deliberate or otherwise avoidable delay. There is little evidence to suggest that the Council were uncooperative at any time during the

enforcement investigation. During the appeal, the applicant was unable to show that any parties not served with a copy of the notice had an interest in the property, were materially affected by the notice and had suffered substantial prejudice as a result.

11. Consequently, when looked at as a whole I am not convinced that the Council's handling of the investigation prior to the issuing of the notice was other than broadly in line with the approach set out in the PPG and the local enforcement plan. The Council's actions were not similar to any of the examples of unreasonable behaviour in the PPG referred to above relating to the matters leading up to the issuing of the notice. Also, there is nothing to indicate that the Council acted in a manner similar to the examples of unreasonable behaviour in the PPG relating to the procedures at an appeal, referred to above.
12. Turning to the substance of the matters at the appeal, the Council's written statement of case expanded on the reasons for taking enforcement action in paragraph 4 of the notice. In relation to the reason at (a), the Council analysed the character and appearance of the surrounding area. It went on to explain, albeit in a brief fashion, why the hardstanding caused unacceptable visual harm and set out the policies in the Development Plan underpinning that conclusion. The exercise of permitted development rights would not have a similar or worse effect to the hardstanding. In relation to reason (c), having regard to the location of the property in a Critical Drainage Area and in the absence of the drainage details for a development that clearly results in additional surface water run-off, it is not unreasonable to adopt a precautionary approach.
13. The Council's evidence in relation to both reasons (a) and (c) was clear, site-specific, precise and generally accurate. There is little which could be considered vague or generalised in this evidence. There were few unsupported assertions or fundamental inaccuracies with a significant bearing on the matters at issue. There was therefore a sound evidential basis for the Council's position in respect of those matters. I reached similar findings to the Council on the matters in reasons (a) and (c). None of this suggests that the Council have not properly exercised their development management responsibilities nor does it call the expediency of issuing the notice into question. Therefore, in my view the Council has substantiated these parts of its case at appeal.
14. Although Officers may have previously expressed a different view on the planning merits of the hardstanding, such advice is not binding on the Council and so does not represent clear and compelling evidence of inconsistent decision making. I can appreciate the applicant's sense of frustration in this matter, following the Council's investigation apparently having been discontinued. Even so, the development was still unauthorised. The applicant could at any time prior to the issuing of the notice have sought a formal determination from the Council in respect of the hardstanding by applying for planning permission but seems to have chosen not to do so.
15. Nevertheless, in relation to reason (b) there is no substantive evidence of a new access point having been formed. Moreover, formation of a vehicular access is not part of the matters alleged in the notice. The Council advanced no firm evidence to show that the hardstanding is used for vehicle parking so as to cause unacceptable harm to the safety of highway users in the vicinity. The evidence that was provided is limited and largely generic. The erection by the

Council of bollards in the highway has largely restricted vehicular access to the hardstanding, thus considerably reducing the likelihood of its use for vehicle parking in any event. In the absence of any clear and compelling evidence of harm, the impression is left that this reason was largely formulated with a possible future use of the hardstanding in mind, rather than being directed at what is occurring in practice in association with the breach.

16. Therefore, in my view the Council has been unable to substantiate reason (b) at appeal, its actions in this regard being similar to some of those examples of unreasonable behaviour in the PPG relating to the substance of the case referred to above. The applicant has clearly been put to the unnecessary additional expense of rebutting reason (b) at the appeal. It follows that, although there is no firm evidence to suggest that the Council have acted unreasonably in the appeal in any other respect, the conditions for an award of costs in the PPG at paragraph 030 have nevertheless been met in part.

Conclusion

17. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in relation to one of the reasons for issuing the notice and a partial award of costs is therefore warranted.

Costs Order

18. 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 the Council of the London Borough of Hillingdon shall pay to Adam Finance Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in rebutting the reason for issuing the enforcement notice in paragraph 4 (b); such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR