The Planning Inspectorate

Costs Decision

Site visit made on 22 October 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 NOVEMBER 2024

245A Acton Lane, Park Royal, London NW10 7NR
Costs application in relation to Appeal Ref: APP/F5730/C/23/3326379

- 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 Old Oak and Park Royal Development Corporation (the LPA) for a partial award of costs against Mr Hashim Siyad (New Sahrah Lounge Ltd).
- The appeal was against an enforcement notice alleging the material change of the use of the ground floor of the building to a Shisha Lounge.

Decision

1. The application for a partial award of cost is refused.

Reasons

2. 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. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal.

3. The LPA's case for a partial award of costs is that the appellant has behaved unreasonably, both procedurally and in relation to the substance of the matter at appeal by making an appeal on ground (b) - that the matters stated in the notice have not occurred, and by requesting a Hearing which was agreed on the basis of pursuing their ground (b) appeal. Briefly, the LPA is seeking to recover the costs for officer time in the preparation of the Ground (b) element of the Hearing Statement and incurred costs for cancelling the Hearing venue. No response to the costs application was received from the appellant.

4. The appellant's grounds of appeal were set out in the appeal form at section E under 'Grounds and Facts'. While ground (b) was ticked, they relied on brief facts set out in their argument under ground (a) that planning permission should be granted. There was no case put forward to support the fact that they considered the alleged breach of control had not occurred. The LPA acknowledged this in its appeal statement which stated that officers would seek to clarify the matter via the Statement of Common Ground (SOCG), a draft copy of which was sent to the appellant and PINS on 2 July 2024. Paragraph 1.6 states "The parties agree that Sahara Lounge is operating as shisha lounge as alleged in the Enforcement Notice (EN) and the Ground (b) appeal in this case is, in effect, submissions on the Ground (a) appeal. The parties agree the

Appellant does not contest the allegation in the EN has occurred as a matter of fact." The SOCG remained unsigned.

5. All parties have a responsibility to adhere to the procedural rules and timetable. Not submitting written evidence to support their appeal was unreasonable behaviour. I appreciate therefore that the Council had to prepare its own case on the basis of very limited information. However, the ground (b) appeal is a legal ground, with the onus being on the appellant to demonstrate their case. The lack of written evidence, in my view, while not assisting the appellant's case, did not hamper the LPA's preparation since it could only respond to what was provided – in this case, the Grounds of Appeal in the appeal form. While the appeal on ground (b) was ultimately misconceived, raising matters of planning merits – the LPA addressed that matter rather than defending a case that the alleged breach of planning control had not occurred.

6. The LPA is also seeking to recover the cost of securing the Hearing venue booked in advance for 30 July 2024, following cancellation of the Hearing on 4 July 2024 by PINS. It considered that the expense of booking the venue need not have occurred if the appellant had supported their ground (b) case to the required deadlines so the hearing could have proceeded, or could have withdrawn this ground in a timely manner. Firstly, it was not unreasonable of the appellant to request a hearing, and a ground (b) appeal without supporting facts would not by itself have resulted in a decision to proceed by a Hearing.

7. With regard to the venue, this was booked by the LPA immediately upon receiving notification of the date for the Hearing on 20 May 2024, some 10 weeks in advance. The venue was subsequently cancelled on 22 July 2024 incurring a cancellation charge. This was some two and a half weeks after the Hearing was formally cancelled by PINS. Although I am not aware of what the cancellation charges are and the terms of the contract, I do not consider that the appellant's behaviour directly resulted in the wasted expense claimed in this case. It is far from uncommon that the first date offered for a hearing may not be acceptable to all parties, for whatever reason, and I consider that it was not unreasonable behaviour on the part of the appellant in this case to seek an alternative date, for the reasons he gave. Furthermore, the LPA would have been aware of this particularly given the exchange of correspondence between PINS and the parties leading up to the cancellation of the Hearing.

8. Having regard to all of the above, I conclude that unreasonable behaviour directly resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, an award of costs is not justified.

S A Hanson

INSPECTOR