Planning Inspectorate

Costs Decision

Inquiry held on 25 September and 1 October 2024

Site visit made on 25 September 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Costs application in relation to Appeal Ref: APP/U5360/C/24/3344092
11 Northfield Road, Hackney, London N16 5RL

- 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 full award of costs against 11 Northfield Limited.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the first floor and attic floor of the Property to a place of public worship or religious instruction.

Decision

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

The Submissions

2. The reasons given for the costs application are summarised as follows:

   - Prior to the issue of the enforcement notice the appellant was invited to submit an application to regularise the development. The appellant failed to respond to this. This was the first opportunity the appellant had to avoid the public inquiry;

   - Given the position of the costs applicant (the Council) on the ground (a) appeal, the appellant acted unreasonably in not submitting an application for planning permission, despite the applicant inviting them to do so during the course of the appeal, thus avoiding the appeal;

   - Again, given the Council's position on the ground (a) appeal, the appellant was unreasonable in pursuing other grounds of appeal, resulting in the need for the applicant to prepare its response to those grounds; and

   - The appellant's ground (d) appeal was 'bound to fail'.

3. I have had regard to the appellant's response in reaching my decision.

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. It is to be commended that the Council engaged with the appellant prior to the issue of the notice in an attempt to remedy the breach of planning control that it alleged had occurred. Whilst the submission of an application for planning

permission prior to the issue of the enforcement notice might have prevented an appeal, I cannot regard the failure to submit this as unreasonable behaviour during the appeal process.

6. The PPG advises that costs cannot be claimed 'for the period during the determination of the planning application'. In my view this advice is equally applicable to the period before the issue of an enforcement notice. I acknowledge that, when reaching my decision on a costs application, I am able to take account of a party's behaviour prior to an appeal. However, in accordance with the PPG, behaviour prior to an appeal cannot form the basis of a successful costs application.

7. Notwithstanding this, whilst the Council gave assurances that permission is likely to have been granted, the appellant was of the view that planning permission was not required for the ongoing use of the property. I have agreed with the appellant on this point. I do not, therefore, find the appellant to have acted unreasonably in not submitting a planning application as the outcome of this would have meant that the lawful use would have been subject to the conditions and limitations of the planning permission, where otherwise there would have been none.

8. For the same reason, I cannot regard the appellant's ground (b), (d), (f) and (g) appeals to be unreasonable. Section 174 of The Town and Country Planning Act 1990 as amended entitles the recipient of an enforcement notice to make an appeal under the grounds stated. Despite the Council's position, the appellant could not have guaranteed success on ground (a), either in its entirety or in the form it sought (i.e. planning permission without any conditions or limitations). It is, therefore, entirely reasonable for the appellant to challenge the enforcement notice by making alternative arguments under the other grounds of appeal, particularly as success on some of these grounds would have meant that the use would not have been the subject of a planning permission, possibly with conditions and limitations.

9. Furthermore, the appellant's reasons for making a ground (b) and (d) appeal are robust. As I have not considered the case made by the appellant on the ground (f) and (g) appeals, my opinion on these remains neutral. Nevertheless, I cannot regard the appellant as unreasonable in making an appeal on grounds other than ground (a), even in circumstances where there had not been success on the grounds I considered.

10. As for the ground (d) appeal, I have agreed with the appellant, that the previous enforcement notice issued in 2019 does not prevent a finding that on the date the enforcement notice subject of the appeal before me was issued, no enforcement action could be taken in respect of the breach of planning control alleged. Accordingly, I cannot agree that the ground (d) appeal was bound to fail and that the appellant was unreasonable to make an appeal on this ground.

11. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR