



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 11 Northfield Limited for a full award of costs against the Council of the London Borough of Hackney.
 - 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.
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Decision

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

The Submissions

2. The costs applicant (the appellant) has made alternative costs applications. The first for a full award of costs and the second for a partial award.
3. The reasons given for the full award are that the Council has acted unreasonably both in substance and as a matter of its procedural approach to the appeal.
4. In the alternative, the appellant makes an application for a partial award of costs on both substantive and procedural grounds in relation to:
 - i. The time spent in relation to the ground (b) appeal;
 - ii. The time spent on matters of fact under the ground (d) appeal;
 - iii. The time spent in preparing the appellant's statement of case on ground (a) in relation to the principle of development; and/or
 - iv. The time spent responding to the Council's costs application.
5. I have had regard to the Council's response in reaching my decision.

Reasons

6. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

7. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:
- lack of co-operation with the other party or parties;
 - delay in providing information or other failure to adhere to deadlines;
 - not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties;
 - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen;
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - 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; and
 - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
8. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.

Reasons

9. The Council sought to engage with the appellant prior to the issue of the enforcement notice. The evidence before me suggests that this was not entirely fruitful, resulting in the issue of the enforcement notice. It appears that any meaningful discussion about the alleged breach of planning control only occurred after the notice had been issued, and the appeal against it made. On this basis, and having regard to the evidence available to the Council prior to the issue of the notice, I do not consider the Council to have been unreasonable in issuing the notice.
10. The chronology provided by the appellant, and supplemented by the Council, shows a willingness of both parties to engage in the appeal process prior to the submission of evidence. The Council were clearly aware of the reasons for the appellant's claims with regard to the ground (b) and (d) appeal early on in this process. The full details of the appellant's written evidence was not, however, apparent until proofs of evidence were exchanged.

11. Furthermore, and with regard to the ground (d) appeal, the weight I have given to the appellant's evidence has increased somewhat as a result of it being tested under oath at the inquiry, and it having been corroborated by interested parties who also spoke at the inquiry. Whilst the evidence to support the Council's alternative ground (d) case¹ was limited, it was, on balance, sufficient to contradict the appellant's claims, to a degree, and to warrant all evidence being tested at the inquiry.
12. Furthermore, the Council's primary case with regard to the ground (d) appeal raised a somewhat complex legal issue. This clearly required testing at the inquiry and the need for submissions made by the parties' legal representatives at the inquiry.
13. As for the ground (b) appeal, the Council were not only reliant on the site visits and photographs taken by the investigating officers in 2018 and 2021. The Council's own witness visited the site in 2023 and, having done so, was of the view that the attic floor of the property was part of the planning unit subject of the alleged material change of use. Having viewed the property during the inquiry, I have some sympathy with the Council's view on this. In particular, I noted that the first floor is entirely open to the central staircase and accessible to those who occupy the attic space. Notwithstanding this, my conclusion on ground (b) became clear having heard the evidence given at the inquiry by the appellant's witnesses and interested parties who occupy the attic office rooms.
14. Having regard to the above, I cannot find the Council to have been unreasonable in its defence of the appeal. To my mind the parties' case on ground (b) and (d) has resulted in the need for the appeal to be heard by way of a public inquiry. For the reasons given above, I am not persuaded that the Council's behaviour has been unreasonable in its response to the ground (b) and (d) appeal, such that an inquiry could have been avoided altogether. Accordingly, a full award of costs is not justified.
15. Moving on, I can see that, following the first day of the inquiry, the Council reviewed its position. As a consequence, the Council's response to the ground (b) appeal was withdrawn and it agreed a statement of common ground on this matter. For it to do so it was, to my mind, necessary for the Council to hear evidence on this matter on the first day of the inquiry. For this reason, and having regard to my findings on the ground (b) matter above, I cannot conclude that the Council behaved unreasonably in its response to the ground (b) appeal in this case, such that a partial award of costs is justified.
16. Turning to the ground (d) appeal, having heard the appellant's evidence on the first day of the inquiry, it might well have become clear to the Council that its dispute of the appellant's claim with regard to the continuity of the use would not have been successful. I note that between the first and second day of the inquiry the appellant sought an agreement on this, as there had been on the ground (b) appeal. However, to my mind the matters relevant to the ground (d) appeal were not as straightforward as those matters that were agreed on ground (b). Furthermore, having agreed what it could with regard to ground (b), there was little time for the Council to consider and acquiesce to the appellant's request on ground (d). Even if it had, I cannot be satisfied that the second day of the inquiry could have been avoided. Evidence from interested

¹ By this I mean the Council's case with regard to the continuity of the use, rather than its primary case that the ground (d) appeal could not be considered in the first instance.

parties, which supported the appellant's case, was heard on the second day. The second day of the inquiry also allowed for the Council's primary case under the ground (d) appeal to be tested.

17. There is evidence of the Council having cooperated with the appellant during the course of the appeal. There was also some effort on the part of the Council to review its case. Whilst I acknowledge that more could have been done on the part of the Council, I cannot, on balance, find the Council to have behaved unreasonably with regard to its response to the ground (d) appeal. Accordingly, a partial award of costs in this regard is not justified.
18. With regard to the ground (a) appeal, the enforcement notice stated a number of reasons for its issue, including the loss of housing. The Council's statement of case also included reference to the loss of housing. However, in carrying out a planning balance², the Council balances this against the need for places of religious worship. Whilst it would have been wrong for the Council not to mention the policies that relate to the loss of housing in its reasons for the issue of the notice, its position on this could have been made more clear. Its position was, however, clarified early in the appeal process. For this reason, I cannot regard the Council's approach to have been unreasonable, such that a partial award of costs is justified.
19. Similarly, I cannot find the Council's position with regard to the imposition of conditions on the grant of the deemed application for planning permission to be a demonstration of unreasonable behaviour. The use of the property as a synagogue clearly has a materially different impact to the lawful use. Added to this is the location of the property in a predominantly residential street. Whether or not the conditions complied with the tests set out in the Planning Practice Guidance on the Use of planning conditions is a matter of judgement. Having regard to the particular circumstances of this case, I cannot regard the Council's position on the need for the conditions suggested to have been unreasonable. For this reason a partial award of costs is not justified.
20. Moving on, the appellant refers to the lack of cooperation from the Council in providing, when requested, copies of the evidence it relied upon in defending the ground (d) appeal. The appellant says that these were requested on 16 July 2024, prior to the submission of proofs of evidence on 27 August 2024. The 'exhibits' referred to include the full record of the site visits undertaken at the property. I can see that the Council had already advised the appellant of the findings of the investigating officer on the various visits undertaken³. Nevertheless, it was incumbent on the Council to provide the documentation in accordance with Rule 8(13) of The Town and Country Planning (Enforcement)(Inquiries Procedure)(England) Rules 2002. This is so that the appellant could see the full content of the notes made by the investigating officer following the site visits.
21. Rule 8(13) is supported by the Procedural Guide: Planning appeals – England, which states that 'a full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal'. By not providing these documents prior to the submission of its proof of evidence, the Council have demonstrated unreasonable behaviour.

² The statement of case refers to section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

³ An extract of this correspondence is included at page 9 of the appellant's statement of case.

22. I acknowledge that the appellant had the opportunity to respond to this evidence and test it at the inquiry. Nevertheless, it was necessary for the appellant, and helpful to the inquiry, to provide a written response (the rebuttals) to deal with this evidence in writing. In particular, the response to the photographs relied on by the Council, which I understand were not disclosed in full until proofs of evidence were exchanged. Accordingly, I find the time and resources taken to prepare the appellant's response to the exhibits relied upon by the Council (the site visits in particular) in the appellant's rebuttal statements, as separate documents to the appellant's proofs of evidence, as unnecessary expense in the appeal process.
23. Finally, I turn to the appellant's application as it relates to the Council's costs application, which I have refused. This was made on four grounds. The first two relate to the appellant's failure to submit a planning application before the enforcement notice was issued and during the course of the appeal. Whilst I have concluded that the appellant did not behave unreasonably in this regard, I do not consider the Council's requests for a planning application either before or during the course of the appeal to have been unreasonable. Although this is not the outcome that the appellant sought, it is one way that the breach of planning control in this case is likely to have been resolved. For this reason I do not find the Council to have behaved unreasonably in suggesting that a failure to submit the requested planning application was itself unreasonable.
24. Similarly, the Council clearly saw the ground (a) appeal as an easy resolution in this case and for this reason considered the other grounds of appeal to be unnecessary. The appellant is, of course, entitled to make its appeal on the grounds made and I have found its case on the grounds that I have considered to be entirely reasonable. For these reasons, as with the matter above, I have dismissed this element of the Council's costs application. It does not, however, follow that the Council was unreasonable to suggest that making those grounds of appeal was itself unreasonable. The Council saw the other grounds of appeal as elongating a process that it thought could be quickly resolved via the ground (a) appeal alone. For this reason, this element of the Council's costs application was not unreasonable.
25. As for the final element of the Council's costs application, the Council clearly had confidence in its success on the matter of the effect of the earlier enforcement notice on the ground (d) appeal. This was a complex matter that, my decision will demonstrate, took time to consider by all parties. It was not, therefore, a hopeless point, such that the Council were entirely unreasonable to suggest that the appellant's defence of it was itself unreasonable.

Conclusions

26. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's failure to provide, when asked, exhibits that it relied upon in its case, and a partial award of costs is therefore warranted.

Costs Order

27. 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 Hackney shall pay to 11 Northfield Ltd, the

costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing a response within its rebuttal statements to the exhibits requested by the applicant but not received in full until proofs of evidence were exchanged; such costs to be assessed in the Senior Courts Costs Office if not agreed.

28. The applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR