



Costs Decisions

Hearing Held on 16 February 2023

Site visit made on 16 February 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2023

Costs application in relation to Appeal A Ref: APP/U5360/W/22/3293945 1 Fairholt Road, Hackney, London N16 5EN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Tiferes Meshulam Feiyish D'Tosh for a full award of costs against Council of the London Borough of Hackney.
- The combined hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for part single, part three storey rear extension; with a single storey basement excavation; associated elevational changes; and the removal of residential use on site (C3), with sole use as synagogue (Use Class F1 (f)).

Costs application in relation to Appeal B Ref: APP/U5360/W/22/3308440 1 Fairholt Road, Hackney, London N16 5EN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Tiferes Meshulam Feiyish D'Tosh for a full award of costs against Council of the London Borough of Hackney.
 - The combined hearing was in connection with an appeal against the refusal of permission for part single, part three storey rear extension; with a single storey basement excavation; associated elevational changes; and the removal of residential use on site (C3), with sole use as synagogue (Use Class F1 (f)).
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Decisions

1. The application for costs in relation to Appeal A is allowed in full.
2. The application for costs in relation to Appeal B is partly allowed.

Procedural Matter

3. The joint application for costs was made in writing prior to the conjoined hearing for both Appeals. The Council provided its joint rebuttal in writing with its Statement of Case and it was confirmed that no further comments would be offered by the Applicant in relation to the Council's rebuttal. I have dealt with the applications together in this single decision letter to avoid duplication.

Reasons

4. 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. The PPG clarifies that costs cannot be claimed for the period during the determination of the application, but that behaviour and actions at the time of

the planning application can be taken into account. Awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

6. The Applicant alleges that the Council has failed to substantiate each reason for refusal; has made vague, generalised, and inaccurate assertions about the proposal's impacts which are unsupported by objective analyses; refused planning permission on two grounds which could have been dealt with by conditions; and, in summary, has delayed development which should have been permitted, having regard to the development plan, national policy and other material considerations.
7. The Council refutes the above claims and sets out that the reasons for refusal (of Appeal B) have been substantiated and are not vague or generalised. Reasons are given for delays for the handling of Application A which the Council highlights did not reoccur during the handling of Application B. Ultimately, the Council considers that it has not delayed development which should have otherwise been permitted.
8. In terms of the Appeal A Application, I note that it was submitted in 2021 during the then ongoing COVID-19 Pandemic when Councils were facing unprecedented issues in the delivery of their services. This can go some way to explaining the lower standards of service experienced by the Applicant. Unfortunately, the 8-week target timescale associated with the application also coincided with staff sickness and resource pressures. These issues were not unique to Hackney Council during that particular period. However, later in the process, it would appear that a significant information technology issue also arose that hampered the delivery of services by the Council, further adding to the pressures being experienced.
9. In my view, the pre-application advice was insufficiently detailed on some aspects, including highways and biodiversity and the level of detail that was necessary to overcome issues which appeared at that time to be considered broadly favourably, i.e. such as the principle of development. Additionally, the change in personnel between the pre-application and application/s also illuminated the subjectivity in relation to character and design considerations, rather too unhelpfully in these cases. That said, the pre-application advice can only go so far and is given on a 'without prejudice' basis as is stated on the advice letter itself. The letter does also flag up issues that could have been more robustly addressed in the submitted application documentation.
10. Having considered the evidence on both sides, whilst I am cognisant of the significant pressures under which the Council was operating at that time, I consider that Appeal A was avoidable. Not for reasons of its accordance with the development plan, as explained in the separate Decision letter, but because not enough steps were taken to progress it effectively or in a timely manner. Better communication and more effective interventions during the processing of the Application could have enabled greater clarity being offered to the Applicant that could have let to its determination if amendments were not to be accepted on a discretionary basis. This may have allowed for the second application to have been used to better effect, rather than essentially as a re-run of Application A with the associated delays.
11. In terms of Appeal B, it does not appear to me that there is enough evidence to substantiate the biodiversity reason (reason for refusal 6), particularly as the

Council has indicated that this issue could be addressed by way of conditions. There has, therefore, been wasted expenditure in addressing this issue across both Appeals.

12. On the basis of the evidence before me, the Council has caused unnecessary expense on the part of the Applicant. Whilst the costs were unlikely to have been onerous as they have not involved the preparation of specialist reports or detailed analyses of any particular aspects, they were unnecessarily incurred and therefore, awards of costs are justified on the basis of the advice in the PPG, limited to those incurred in the preparation and submission of Appeal A and in the defence of the biodiversity reason for refusal across both Appeals.

Costs Order

13. 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 Hackney Council shall pay to Tiferes Meshulam Feiyish D'Tosh, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The Applicant is now invited to submit to Hackney Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hollie Nicholls

INSPECTOR