



Costs Decision

Hearing held on 4 February 2025

Site visit made on 4 February 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Costs application in relation to Appeal Ref: APP/U5360/G/24/3354819

1 Great Eastern Street, Hackney, London EC2A 3EJ

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
 - The application is made by King Media Limited for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against discontinuance action in respect of an externally illuminated mesh shroud measuring approximately 10m x 10m, located from first to third floor on the elevation fronting Great Eastern Street.
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Decision

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

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.
3. The PPG provides examples of unreasonable behaviour by Council's including failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised, or inaccurate assertions about a proposal's impact, unsupported by objective analysis and failure to determine similar cases in a consistent manner.
4. As set out in my decision, there has been a history of involvement between the Council and applicant regarding the display of an advertising shroud, dating back to at least 2008, involvement which the Council stated was because of public complaints. There is no evidence that prior to 2020, the Council considered and decided not to take discontinuance action, nor that they gave assurances to or led the applicant to believe that no such action would be taken.
5. Moreover, whilst the Council has not issued any other discontinuance notices for advertisements in the South Shoreditch Conservation Area (SCCA) within the last four years, they have issued removal notices, with four examples given and confirmation that they are investigating those at 2–4 Great Eastern Street.
6. As set out in my decision, whilst the applicant does not agree, the reasons for issuing the notice are specific to the advertisement and clearly set out why it is considered to cause substantial injury. The reference to substantial harm and to the terminology and test set out in the National Planning Policy Framework (the

Framework) does not give rise to any fundamental misunderstanding about what makes the display unacceptable to the Council.

7. The Council evidently consider the advertisement to cause harm to designated heritage assets (plural), albeit the Council say not *substantial*, as stated in the reasons.
8. Notwithstanding the casual use of the word *substantial* in respect of heritage assets, the applicant was aware of the case they had to meet as evidenced by the instructions to Dr Miele and as set out at paragraph 4.6 of his report where it is stated that "In conclusion and drawing the above together, I consider that the Council is making its claim of substantial injury with reference to A) conservation area impact, comprising harm to the South Shoreditch Conservation Area's character and appearance, and B) to more generally to the amenity and character of the area."
9. The reasons given in the notice in respect of heritage assets, are not detailed, however, the harm to the SCCA is assessed in the delegated report and is in any event a matter to which I am required to have regard.
10. Although it may have been helpful, it was not unreasonable that Mr Dyer had no input into the decision to take action. His view given at the Hearing was specific to the heritage assets and in terms of the terminology in the Framework which is only relevant in so far as it informs the assessment of substantial injury to amenity.
11. Mr Dyer identified harm to the SCCA, stating that he considered the harm to be at the low to medium end of less than substantial harm. However, as acknowledged by Dr Miele, the PPG advises that in general terms, substantial harm is a high test, so it may not arise in many cases, and the Council are, in any event, entitled to take a different view to that of Mr Dyer.
12. In respect of the alleged harm to the setting of those Grade II listed properties of 5 Fairchild Place and 6-8 Great Eastern Street, the Council's assessment was confined to a single line in the delegated report. Notwithstanding whether I have a duty to consider this matter, having raised the issue, the Council should have substantiated their objections which they did not.
13. At the Hearing Mr Dyer set out his view that there was no harm to the setting of those buildings and there was no attempt by the Council to defend their position. The Council's actions in this respect were unreasonable and the applicant incurred unnecessary expense in defending their case on this point.
14. In respect of the harm to the amenity of the occupants of the flats, although the Council did not carry out a site visit, it is not uncommon for such judgements to be made based on knowledge and experience and this was not unreasonable. As evident from my decision, whilst I did not agree with the Council in respect of daylight/sunlight matters, I found harm in respect of outlook and light pollution.
15. Whilst I acknowledge the reference to the advertisement being *opaque* in the delegated report, this was not repeated in the notice, and it was evident from the reasons for taking action the harm being alleged.
16. The Council referred to several policies, which the applicant disputes the relevance of, but this does not mean the Council acted unreasonably. I acknowledge that the Council referred to section 38(6) of the Planning and Compulsory Purchase Act

- 2004 which does not apply to appeals concerning advertisements. However, it seems highly likely, based on the submissions, that they would have reached the same decision had they had regard to those policies only so far as they are relevant to the criteria set out in the Regulations.
17. The Council did not allege the advertisement caused the deterioration in the external fabric of the building, but that its presence prevents proper repair and maintenance. The applicant's submissions acknowledged the deterioration in the external fabric of the building due to a lack of maintenance, that works of repair are needed and that the advertisement would have to be removed to carry out such works.
 18. As I found, it seems likely that its presence hindered maintenance, since it would need to be removed to carry out such maintenance, and as it conceals the deteriorating condition of the building. The applicant submitted the surveys and unilateral undertaking to overcome the valid concerns of the Council.
 19. I concluded that the harm to visual amenity and the SCCA alone causes substantial injury to amenity, and I agreed with the Council in respect of the harm to the amenity of occupants and matters relating to the repair and maintenance of the building. It was not unreasonable of the Council to find that the cumulative effect of each identified impact led to substantial injury to amenity.
 20. The application largely attacks a perceived failure on the Council's part to substantiate its concerns when there was simply a disagreement as to the merits of those concerns. For the most part, the Council's conduct did not amount to unreasonable behaviour resulting in unnecessary or wasted expenditure by the applicant.
 21. However, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the Council's case that there was harm to the setting of the Grade II listed properties of 5 Fairchild Place and 6-8 Great Eastern Street, and a partial award of costs is justified. The partial award should be based on the time spent by the applicant defending their case in respect of the setting of those listed buildings.

Costs Order

22. 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 King Media Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending their case in respect of the setting of those Grade II listed properties of 5 Fairchild Place and 6-8 Great Eastern Street; 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 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.

Felicity Thompson
INSPECTOR