Planning Inspectorate

Costs Decisions

Inquiry held on 2,3,4,5 & 11 September 2025

Site visit made on 2 September 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 29 October 2025

Costs application in relation to Appeal A Ref: APP/U5360/C/25/3365198
65-69 Amhurst Park, LONDON, N16 5DL

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 Talmud Torah London Limited for a partial 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, Without planning permission, the material change of use of 69 Amhurst Park, and the land to the rear of 65 and 67 Amhurst Park, to a school, the laying of hardstanding to the land to the rear of 65-67 Amhurst Park, the erection of one front and two rear outbuildings, a fire escape staircase and a rear roof extension at 69 Amhurst Park.

Costs application in relation to Appeal B Ref: APP/U5360/C/25/3365199
65-69 Amhurst Park, LONDON, N16 5DL

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 BYGS SH Ltd Alexander Julius Halpert for a partial 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, Without planning permission, the material change of use of 69 Amhurst Park, and the land to the rear of 65 and 67 Amhurst Park, to a school, the laying of hardstanding to the land to the rear of 65-67 Amhurst Park, the erection of one front and two rear outbuildings, a fire escape staircase and a rear roof extension at 69 Amhurst Park.

Decision on Costs Application in relation to Appeal A

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

Decision on Costs Application in relation to Appeal B

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

Costs Application in relation to Appeal A

The submissions for Talmud Torah London Limited

3. The costs application was submitted in writing.

4. The appellant seeks a partial award of costs in respect of the following matters at appeal. Firstly, they seek the costs resulting from the Council's unreasonable refusal to accept that the test in Policy LP24(vi) is satisfied. Secondly, they seek the costs of responding to the Council's unreasonable late submission of evidence, in the form of an excel spread sheet identifying 104 permissions purportedly granted for Charedi Jewish school development, and thirdly, they seek the costs

arising as a result of the Council's failure to engage cooperatively with the Applicant, including in relation to conditions and the section 106 planning obligation. They consider that in these matters the Council has behaved unreasonably and that unreasonable conduct has resulted in the Applicant incurring additional expense.

The response by the London Borough of Hackney

5. The response was made in writing.

6. The Council is of the view that it put its case consistently and clearly set out why planning permission should not be granted. They believe their submissions and evidence included reasoned objections to the search area selected by the Applicant, as well as setting out other concerns with the Available Site Assessment. It was for the Applicant to consider how best to support his appeal. However, to satisfy Policy LP24 (vi) some form of alternative site search needed to be carried out. There was thus no wasted expense, and Mr Brooke's time at the Inquiry was necessary as an expert witness.

7. In relation to the submission of late evidence in the form of a list of planning applications/permissions for Charedi schools, the list was prepared in response to the Appellant's witness's introduction of a new point in giving evidence. Mr Pinter suggested that the Council *"deliberately discriminated in the way it carries out assessment of planning applications."* The Council had a right to rebut that accusation and it was agreed with the Inspector that this would be done by the preparation of a list of applications/permissions. This list was produced within four hours of the issue first arising. Contrary to the Applicant's application, it was the Council who had to spend unnecessary time compiling a list to rebut the incorrect claim by Mr Pinter when giving evidence.

8. The Council submit that the Applicant failed to have regard to the Enforcement Appeals Procedural Guidance which advises on the timescale when submitting a final draft of any proposed planning obligations in the appeal process. They submit that it was not until three working days before the start of the Inquiry that the Council's solicitor received an email from the Applicant requesting that the Council prepare the draft S106 Deed and confirming that the Council's fees had been paid. The Council do not accept that it has acted unreasonably in terms of not dealing cooperatively and proactively with the Applicant and have provided a chronology of events relating to the drafting of the planning obligation document to demonstrate their involvement.

9. With regard to agreeing and discussing conditions. The proposed conditions were submitted to the Applicant and PINS by the Council on 5 August 2025. The conditions were discussed during roundtable discussions on 4 & 5 September and a redrafted version sent to Mr Posen on 10 September. Nevertheless, the Council submit that the final draft version should have been provided by the Applicant not less than 10 working days prior to the start of the Inquiry. This delay, and further discussions, inevitably had a knock-on effect on other parts of the timetable. It is the Council's view that any delays in finalising of the conditions are the responsibility of the Applicant due to their failure to comply with the expected timetable and the Council actively engaged in the process.

Reasons

10. 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.

Unreasonable Refusal, Policy LP24 (vi)

11. PPG advises that a local planning authority may be at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, failure to substantiate each reason for refusal[1].

12. The issue at appeal was whether the second limb of Policy LP24 (vi) HLP has been met. Thus, the Applicant needed to demonstrate that the school could only be provided by the loss of residential floorspace. The Applicant chose to do that by asking Savills to undertake an Available Site Assessment (ASA) to consider whether there are, or could be, within a reasonable timeframe, suitable alternative non-residential sites available to accommodate the school in a suitable local area. To satisfy Policy LP24(vi) some sort of assessment of possible alternative sites had to be undertaken, and the Applicant chose Savills to undertake that task. There has therefore been no wasted time or expense in the preparation of that report.

13. The Council raised some issues regarding the ASA site search area and the criteria used to identify suitable sites within that area. Those concerns were set out in the Council's rebuttal statement (paragraphs 2.15-2.18). Whilst at paragraph 2.18 Ms McLean accepted that there will be changes of use **sought[2]** for existing housing stock to become schools, she advised that the Council seek to grant those applications where they are, on balance, policy compliant. She then went on to say why she considered the Savills' report to be lacking. She did not therefore concede that the development the subject of the appeal was in this case policy compliant.

14. It seems to me that it was necessary for Mr Brooke to attend the Inquiry to provide evidence to support the ASA and answer questions in relation to that document. After hearing Mr Brooke's evidence, Ms McLean did accept that the ASA site search area was reasonable, albeit she stated that she still saw no reason why the search area could not have included the southeastern area. She also, after hearing all the evidence, agreed that Mr Brooke's approach to seeking a site for the school with external space was fair and reasonable. However, it was necessary for Mr Brooke to give evidence on that point, and he conceded the actual Department of Education's standards in that regard. When asked if the ASA was fair, robust and reasonable, Ms McLean said *"in general, yes, room for improvement but does not actually justify why only this site is suitable."* Furthermore, whilst she stated that she recognised that there will be changes of use from residential to provide schools, she said that she couldn't agree that that would be the 'only' way.

15. It can be seen from my decision that I found that the development in this case was Policy compliant. However, it was not unreasonable for the Council to test the Applicant's case. It was not for the Council to suggest alternative sites. The Council set out clearly in their statement of case and proof of evidence what their concerns were, which policies they considered there to be conflict with and why

[1] PPG: Paragraph: 049 Reference ID: 16-049-20140306.
[2] Bold is my emphasis.

they believe the development to be contrary to the development plan. I am satisfied that the local planning authority substantiated their case, and their behaviour was not unreasonable in relation to this matter at appeal.

Late Evidence

16. PPG advises that a local planning authority may be at risk of an award of costs if they do not behave reasonably in relation to procedural matters at appeal. Examples include lack of co-operation with the other party; delay in providing information or other failure to adhere to deadlines; introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen[3].

17. The 'late' evidence referred to by the Applicant was a spreadsheet of grants of planning permission for schools (including for works to and extensions to existing schools) which the Council believed to be associated with the Charedi community[4]. It was produced by the Council during the Inquiry in direct response to Mr Pinter's point in cross examination that the Council were discriminatory in the way that they dealt with planning applications for Charedi Schools. The spreadsheet was produced with my consent to minimise time at the Inquiry.

18. Section 8 of Mr Pinter's Proof of Evidence sets out his concerns with the planning system, and states '*Planning applications for D1/F1 educational use are routinely refused.*' No substantive evidence was provided by Mr Pinter to support that statement. However, his evidence during cross examination was more specific in that he suggested that Hackney Council had "hidden motives"[5] when considering planning applications for Charedi Schools. It was not unreasonable for the Council to seek to refute that assertion, and both parties agreed a reasonable approach to doing so with my consent. Whilst I appreciate that Mr Posen spent some considerable time interrogating the details of the spreadsheet produced by the Council, it was not unreasonable for this 'late' evidence to have been provided, having regard to the assertions made by Mr Pinter at Inquiry. I therefore conclude that the Council's behaviour in respect of this matter was not unreasonable.

Failure to engage cooperatively with the Applicant, including in relation to conditions and the section 106 obligation.

19. As set out above the PPG advises that a local planning authority may be at risk of an award of costs if they behave unreasonably in relation to procedural matters at appeal. Examples include lack of cooperation with the party/parties; and delay in providing information or other failure to adhere to deadlines.

20. Both parties have provided substantial evidence in the form of copies/recitals of email correspondence and detailed chronologies of events relating to the appeal, and specifically in relation to the preparation of the S106 obligations and conditions.

21. From the evidence available, it appears that Mr Posen first sought to engage with the Council in respect of the proposed planning obligation on 11 July 2025, shortly after the submission of the Council's initial Statement of Case. On 16 July a template of a draft obligation document from the Council was forwarded to Mr Posen to enable him to prepare the draft. From that point on, evidence from both

[3] PPG: Paragraph: 047 Reference ID: 16-047-20140306.
[4] Document 7 at Inquiry.
[5] Inspector's note of evidence at Inquiry.

parties indicates that there was a continual dialogue between the parties in relation to the nature of the obligations to be provided and whom would be preparing the document, fees to be paid etc. Correspondence was exchanged in relation to those matters every day or so, which demonstrates that there was an ongoing dialogue between the parties. Whilst there is some disagreement over how certain matters should be dealt with, for example by condition or by planning obligation, and what could or could not be agreed in the Statement of Common Ground, it seems to me that there was a genuine effort by both parties to ensure that the appeal process and Inquiry timetable could be met. The evidence does not demonstrate that the Council failed to cooperate or failed to meet any agreed deadlines such that their behaviour could be unreasonable.

22. The Inquiry did extend beyond the initial agreed timetable. However, that was in the main due to the number of additional interested parties attending the event and wishing to be heard. Whilst the finalised conditions and planning obligation were not received until 18 September, I agreed that date with the parties and considered that to be a reasonable timetable given the ongoing discussions and legal requirements required to secure the planning obligation. Furthermore, even if the dialogue between the parties was protracted, it was incumbent on the parties to agree a schedule of conditions and for the Applicant to provide a planning obligation to support his appeal should he wish to do so. Thus, the time and expenses associated with preparing those documents as part of the appeal process was not wasted or unnecessary.

23. In conclusion, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

24. Costs Application in relation to Appeal B

Reasons

25. The costs application submitted by BYGS SH Ltd Alexander Julius Halpert in respect of their appeal (Appeal B) was the same as the application for costs made by Talmud Torah's (Appeal A). However, the costs claimed relate to alleged unreasonable behaviour in respect of the appeal on ground (a), deemed planning application. BYGS SH Ltd Alexander Julius Halpert did not appeal on ground (a) and thus there was no deemed planning application. The Council cannot therefore have behaved unreasonably in respect of matters that did not form part of Appeal B.

26. In conclusion, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Elizabeth Pleasant

INSPECTOR