



## Costs Decision

Inquiry Held on 25 June 2024

Site visit made on 18 July 2024

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> July 2024**

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### **Costs application in relation to Appeal Ref: APP/A5270/C/21/3266240 40 Bideford Avenue, Perivale, Ealing UB6 7PY**

- 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 Ealing for a partial award of costs against Mr Ali Al-Najafi (NAI Lounge Ltd), being an application for an award of costs in respect of the redetermination of the appeal only.
  - The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission: The material change of use of the premises to a composite use, comprising a café and mixed use restaurant and shisha lounge (marked with an 'X' on the plan attached to the notice); AND  
The erection of a side and rear extension (hatched in black on the plan attached to the notice); AND  
The erection of 2 rear retractable canopies (each marked with a 'Y' on the plan attached to the notice).
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### **Decision**

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

### **Procedural Matters**

2. My Appeal Decision supersedes that issued on 17 February 2022 ('the initial appeal decision').
3. The initial appeal decision was remitted for re-hearing and determination by order of the High Court. Following the remission, and while the Council's view was that the redetermined appeal should be considered under the written representations procedure (as the initial appeal had been), the appellant requested an inquiry as the most appropriate appeal procedure. This, it was said, would provide full examination of the legal issues raised and testing of factual evidence given on oath by witnesses to be called in support of the appellant's case. The Inspectorate agreed to the appellant's request on that basis, and the inquiry procedure was implemented.

### **Reasons**

4. The Planning Practice Guidance (PPG) says 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. Having requested the inquiry procedure, the appellant did not attend the Inquiry (nor did any agent or advocate on his behalf). No list of witnesses or proofs of evidence had been provided, and indeed there had been a lack of engagement by the appellant with the appeal process for some months.

6. Accordingly, having first sought the views of the only party attending the event (the Council, who also made its costs application), I closed the Inquiry and the appeal has been determined on the basis of written representations thereto received and an unaccompanied site visit.
7. The appellant was sent a copy of the Council's costs application for a response/rebuttal, but did not reply. It is therefore an undefended costs claim.
8. The PPG is clear that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include failing to attend or to be represented at an inquiry without good reason<sup>1</sup>.
9. Therefore, for the above reasons, the appellant has behaved unreasonably in the appeal process and the Council has been put to unnecessary or wasted expense following remission of the appeal in preparing for and attending an Inquiry without the engagement or participation of the appellant.

### **Costs Order**

10. 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 Mr Ali Al-Najafi (NAI Lounge Ltd), shall pay to Council of the London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the redetermination of the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr Ali Al-Najafi (NAI Lounge Ltd), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Andrew Walker*

INSPECTOR

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<sup>1</sup> Paragraph: 052 Reference ID: 16-052-20140306