



Costs Decisions

Inquiry held on 6-8 November 2024

Site visit made on 7 November 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Costs applications in relation to Appeal Ref: APP/F5540/C/24/3338679

108 Hibernia Road, Hounslow TW3 3RN

- The applications are 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 applications are made by Link-Estates Limited for a partial award and a full award of costs against the Council of the London Borough of Hounslow, and by the Council of the London Borough of Hounslow for a partial award of costs against Link-Estates Ltd.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging, as varied, the unauthorised change of use from a Mixed Use Doctors Surgery (Class E (e) use) and as a separate self-contained residential unit on the first and attic floors (Class C3) to a Mixed Use House of Multiple Occupation (Sui Generis use).
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Decisions

The applications by Link-Estates Ltd

1. The applications for awards of costs are refused.

The application by the Council of the London Borough of Hounslow

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

Procedural matter

3. The applications, the responses to each application, and the final comments in all cases, have been made in writing.

Reasons

4. 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.

The first application by Link-Estates Ltd

5. The application relates to an incorrect landline telephone number stated in an email to the Appellant's Agent by a Lawyer acting on behalf of the Council, and to his mobile telephone number not being recognised. The error in the landline number was acknowledged and corrected. The difficulties experienced by the Appellant's Agent in contacting the Lawyer may have been inconvenient. However, the inconvenience doesn't come close to justifying a conclusion that the Council has behaved unreasonably. The application for an award of costs thus fails.

The second application by Link-Estates Ltd

6. It is not for The Planning Inspectorate (PINS) to dictate to an Appellant which of their grounds of appeal can or should proceed. An Appellant must decide which grounds of appeal shall be pursued and in this case the Appellant persisted with ground (c) and (d) appeals up to and throughout the Inquiry. The Appellant sought to engage with the Council during the appeal process but only on the premise that the enforcement notice was somehow defective. That the Council maintained throughout the process that the notice was not defective was not unreasonable and, apart from correction of a couple of inconsequential minor errors, the notice has been found to be effective.

7. The Appellant made ground (c) and (d) appeals and, as mentioned above, persisted with these grounds of appeal up to and throughout the Inquiry. It was not therefore unreasonable for the Council to maintain a view, throughout the appeal process, that an Inquiry was the appropriate procedure. PINS did not arrange a case management conference to "...address the unacceptable behaviour of the Council..." but to address various relevant matters, and the Council has not withheld evidence at any time. The bundle of documents submitted by the Council in June 2024 was complete, and the submission of case law at the Inquiry is not an unusual occurrence and is not unreasonable.

8. The Inquiry timetable was not reset because "...the behaviour of the Council was at such an unacceptable level..." but for a variety of reasons, including the Appellants' Agent's persistent and unfounded claims that the Council was withholding evidence and his unwillingness, therefore, to fulfil his obligations. It was unfortunate that the original Inquiry venue was found to be unacceptable, for noise reasons. The Council quickly secured an alternative venue and the Inquiry proceeded to its conclusion well within the agreed three days. The Council cannot be accused of acting unreasonably in this regard.

9. The progress of a planning application and a subsequent appeal against non-determination of that application is not relevant to the application for costs. It is for the Council to determine whether it is expedient and in the public's interest to pursue enforcement action, and such action may be pursued even if other attempts are being made to resolve a planning situation. The Council, in this regard, took enforcement action after three failed planning appeals that considered refused or non-determined applications for the material change of use alleged in the enforcement notice, which has been unauthorised for in excess of four years.

10. The Council has not, at any time, acted unreasonably. The application for an award of costs thus fails.

The application by the Council of the London Borough of Hounslow

11. The PPG makes it clear that "An Appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding". The Appellant put forward no evidence to support their ground (c) and (d) appeals, which were misconceived and which had no reasonable prospect of succeeding. The Appellant, furthermore, and quoting from Government guidance on enforcement notices and appeals, sought an Inquiry to consider these two grounds of appeal in particular.

12. Had the Appellant's Agent understood what is for consideration under grounds (c) and (d) he would not have made those appeals and would not have

been able to claim that an Inquiry was necessary. The Appellant persisted with the ground (c) and (d) appeals up to and throughout the Inquiry. To oppose these grounds of appeal it is not surprising that the Council agreed to the need for an Inquiry. It was necessary for the Council to instruct Counsel, Mr Forrest, and for him to prepare for and attend the Inquiry.

13. The appeal, setting aside grounds (c) and (d) and thus proceeding under grounds (b), (e), (f) and (g), would have been suitable for consideration by the written representations procedure. It was the Council's choice to appoint a Planning Consultant, Ms Visagie, to act on their behalf, but if the written representation procedure had been adopted she would not have been required to attend the Inquiry. The attendance of the Council's enforcement officer, Mr Qureshi, was not necessary as he did not give evidence.

14. The Appellant, through their Agent, has acted unreasonably and the Council has incurred wasted expense. The wasted expense has been incurred by the need for the Council to instruct Counsel and for Mr Forrest's preparation for and attendance at the Inquiry, and for Ms Visagie's attendance at the Inquiry. The application for an award of costs, to this extent, thus succeeds.

Costs Order

15. 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 Link-Estates Ltd shall pay to the Council of the London Borough of Hounslow, the costs of the appeal proceedings described in the heading of these decisions limited to those costs incurred in refuting the ground (c) and (d) appeals and thus by their Counsel's preparation for and attendance at the Inquiry and by their Planning Consultant's attendance at the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The Council of the London Borough of Hounslow is now invited to submit to Link-Estates Ltd to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector