



Costs Decision

Hearing held on 29 April 2025

Site visit made on 29 April 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7 May 2025

Costs applications in relation to:

Appeal A Ref: APP/X5990/C/25/3359368 (Heat Pump)

55 Shirland Road, London W9 2JD

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jospeh De Klee of The Hero at Maida Limited for a full award of costs against Westminster City Council.
 - The appeal was against an enforcement notice alleging the installation of a heat pump unit and associated fixtures and fittings.
-

Appeal B Ref: APP/X5990/C/25/3359369 (Kitchen Duct)

55 Shirland Road, London W9 2JD

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jospeh De Klee of The Hero at Maida Limited for a partial award of costs against Westminster City Council.
 - The appeal was against an enforcement notice alleging the installation of a kitchen ventilation duct on the rear façade of the property and associated fixtures and fittings.
-

Decisions

Appeal A

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

Appeal B

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

Preliminary Matters

3. 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.

APPEAL A (HEAT PUMP)

The submissions of Mr De Klee

4. The costs application was made orally at the hearing. The applicant contends the appeal could have been avoided by more diligent investigation that would have avoided the need to serve the enforcement notice. This is on the basis that the Noise Impact Assessment (NIA), which was submitted to the Council approximately

one month prior to the enforcement notice was issued, concluded the heat pump would meet the Council's noise standards subject to certain attenuation measures being secured. For similar reasons, the applicant says the Council also failed to review its case promptly and failed to recognise that the main issue could be addressed by conditions. Finally, the applicant says it was unreasonable for the Council to consider the attenuation measures would need to be subject to their own application.

The response of the Council

5. In response, the Council highlighted that the heat pump unit did not contain sufficient acoustic attenuation measures at the time of the notice, which meant it was unacceptable in its current form. The Council also said the enforcement notice had been issued after approximately two years of investigation, during which numerous noise complaints pertaining to the heat pump had been received. In summary, the Council said it was reasonable to serve the enforcement notice when it did.

Reasons

6. According to the Council's delegated report, the enforcement investigation into the unauthorised heat pump (which was originally located on the third floor roof terrace) was opened in March 2023, following several noise complaints from neighbouring residents. A Planning Contravention Notice was issued that month, which the owners did not respond to. In May 2023, an enforcement notice was issued in connection with the heat pump, which required its removal.
7. Following non-compliance with the enforcement notice within the requisite time period, the Council says it continued to issue warnings to the owners of the appeal property, and threatened prosecution. These warning letters were issued in October 2023, May 2024 and August 2024. It took until August 2024 for the owner of the property to engage with the Council in respect of the unauthorised heat pump.
8. In December 2024, a site inspection carried out by the Council determined that the heat pump had been relocated within the appeal site, but had not been removed from the site (despite assurances by the owners that it would be). The Council then proceeded to issue the enforcement notice in respect of the heat pump in its current location on 20 December 2024.
9. Clearly, the enforcement notice was issued following a long period of investigation by the Council, with limited engagement from the owners up until prosecution was a real possibility. Notwithstanding the NIA which was submitted to the Council in November 2024 (as part of an application for pre-application advice), it was therefore reasonable for the notice to be issued when it was, particularly as complaints were still being received by the Council at that time.
10. Whilst the pre-application advice concluded the heat pump could be acceptable in terms of noise (subject to attenuation), it was not issued until 21 March 2025. This was just weeks before the hearing and after submission of the parties' statements. At this point, it was reasonable for the issues to still be addressed during the hearing, noting complaints were still ongoing and limited detail of the noise attenuation measures was available. Given this limited detail, it was also not

unreasonable for the Council to question whether the attenuation measures may need to form part of a planning application (rather than being left to condition).

Conclusion (Appeal A)

11. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Appeal A.

APPEAL B (KITCHEN DUCT)

The submissions of Mr De Klee

12. The costs application was again made orally at the hearing. The applicant contends that the Council did not substantiate its heritage objection to the development, and therefore say the Council's case on this issue was vague, generalised or inaccurate. If the Council had not maintained its heritage objection, and had accepted there was no amenity impact (as set out in the pre-application advice), the applicant further argues that the sole main issue would have been the development's impact on the character and appearance of the area. If that was the case, the applicant says the appeal would have been dealt with via written representations, thereby avoiding the need for a hearing.

The response of the Council

13. The Council said it had assessed the level of heritage harm in their evidence, and had received advice from Design and Conservation Officers on this issue. The Council also highlighted it had assessed potential public benefits of the development, but had concluded any benefits were mainly to the business itself. Again, the Council reiterated that the pre-application advice was not available at the time of the enforcement notice, which meant it was reasonable for the notice to be issued when it was.

Reasons

14. Similarly to above, the amenity impact of the duct was not clear prior to the pre-application advice being issued late in March, which was just weeks before the hearing. At this point, it was not unreasonable for the Council to proceed with the hearing, noting no change of procedure request was made by the applicant. It was also the applicant who initially requested the hearing procedure (and not the Council), which means the costs incurred by the applicant in the hearing were, at least in part, a result of their own choice.
15. In terms of heritage, the Council did not explicitly assess the significance of the Maida Vale Conservation Area (CA) in its evidence. However, it clearly articulated the reasons it considered the duct to be visually harmful. Noting the Council's views on this issue, there is little to suggest the Council would have reached any other conclusion with regards to heritage impact, even if the significance of the CA (and the development's impact on this significance) had been clearly set out. In other words, the Council's heritage objection would likely have subsisted regardless, which means the costs incurred by the applicant on this issue were not unnecessary or wasted.
16. At paragraph 6.37 of the Council's Statement of Case, the Council does acknowledge the applicant's position that dismissal of the appeal could result in the

property becoming vacant, loss of jobs and loss of a community facility. Whilst this does not form part of a clear balancing exercise, it at least demonstrates the Council had, to some degree, considered the potential benefits of the scheme. Again, there is little to suggest the Council would have reached a different conclusion with regards to heritage, even if the potential benefits of the development had been addressed comprehensively as part of a heritage balancing exercise. Accordingly, the costs incurred by the applicant on this issue were again not wasted.

Conclusion (Appeal B)

17. Once again, unreasonable behaviour resulting in unnecessary or wasted expense has therefore not occurred and an award of costs is not warranted in respect of Appeal B.

James Blackwell

INSPECTOR