



Costs Decisions

Inquiry Held on 1 April 2025

Site visit made on 2 April 2025

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

an Inspector appointed by the Secretary of State

Decision date: 9 May 2025

Costs application in relation to Appeal A: Ref APP/T5150/C/24/3351394 10 Heather Road, London NW2 7ND

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6 (the Act), and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Gilson (Sydon Investment Ltd) for a partial award of costs against the Council of the London Borough of Brent.
 - 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 House in Multiple Occupation (HMO) ("the unauthorised change of use")
AND Without Planning Permission, the erection of a single storey rear extension ("the unauthorised development").
-

Costs application in relation to Appeal B: Ref APP/T5150/X/24/3357377 10 Heather Road, London NW2 7ND

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6 (the Act), and the Local Government Act 1972, section 250(5).
 - The application is made by Sydon Investment Ltd for a partial award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for a single-storey rear extension.
-

Decisions

1. The applications for costs are allowed in the terms set out below.

Reasons

2. 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. In particular, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. An example given is acting contrary to, or not following, well-established case law.
4. While it was not necessary in my Appeal Decisions to make findings on the issue, as I found the single-storey rear extension not to constitute a breach of planning control, it was a matter of dispute between the parties whether or not it would otherwise have had acquired immunity from enforcement action by reason of the time limits in section 171(B) of the Act.

5. The Council's argument can be summarised (as it was in opening and closing) that the extension was erected to effect the change of use to an HMO. It said for that reason, the relevant immunity period for the extension was 10 years rather than 4 years for operational development under section 171(B)(1) of the Act¹. However, it is clear to me that the Council entirely failed to consider and apply the important case of *Caldwell*² in its assessment of the relevant immunity period. Had it done so, the natural conclusion would have been that 4 years was indeed the relevant immunity period for the operational development forming a separate allegation within the notice. Significantly, as in the *Caldwell* case, the Council's position as the local planning authority was essentially that the operational development had brought about the change of use and was not deemed 'ancillary' to it. Therefore, the implications of the *Caldwell* judgement that the 'Murfitt principle'³ could not apply in the case of the extension should have been taken into account. The fact that the Council omitted to do so throughout the appeal process was unreasonable behaviour which caused the appellant unnecessary costs in arguing the point in both appeals.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order – Appeals A and B

7. 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 Brent shall pay to Sydon Investment Ltd, the costs of the appeal proceedings described in the heading of these decisions (Appeals A and B) limited to those costs incurred in the matter in dispute as to whether or not the single-storey rear extension had acquired immunity over time (had it constituted a breach of planning control); such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the Council of the London Borough of Brent to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR

¹ While the Council's Proof of Evidence refers to a breach of planning control arising from alleged breach of conditions, that was not the breach targeted by the notice – it being issued under section 171A(1)(a) of the Act.

² *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467.

³ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598.