



Costs Decision

Site visit made on 22 April 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Costs application in relation to Appeal Ref: APP/T5150/W/24/3356370 272 Dollis Hill Lane, Brent, London NW2 6HH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Riaz Datoo of 31 MAR Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for demolition of existing buildings and erection of new detached dwelling house with accommodation in the roof space.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Unreasonable behaviour can relate to procedural matters (i.e., the appeal process) or substantive matters (i.e., issues related to the planning merits of the appeal). Examples include: preventing or delaying development which should clearly be permitted, failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; acting contrary to, or not following, well-established case law; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. The application for costs relates to each of these examples.
4. The applicant has also referred to the Council's failure to engage or co-operate with the applicant despite multiple attempts by the applicant to initiate dialogue; failure of the case officer to conduct a site visit; a predetermined intention by the Council to refuse the application; and the Council's misinterpretation of its own policies and guidance.
5. It is not disputed that the Council did not engage with the applicant during the application process. The Council points to its duty to deliver timely decisions and contends that there was no obvious acceptable alternative to the submitted proposal without substantial or fundamental revision which would have protracted the process without certainty of satisfactory resolution. While the National Planning

Policy Framework (the Framework) and PPG expects local planning authorities to work proactively with applicants in a positive and creative way, it is clear from the applicant's correspondence to the Council that they only considered 'minor' amendments to the submitted scheme were necessary, if at all. Given my findings on the harmful scale, bulk, massing and architectural detailing of the proposal, I consider that the Council took a reasonable approach in determining the application.

6. While a site visit was not conducted, the applicant has not sufficiently demonstrated that the Council did not properly assess the application or that it directly caused the need for the appeal.
7. The applicant contends that the Council acted unreasonably by approaching the planning application with a predetermined intention to refuse the application evidenced by minor and easily resolvable objections to the proposal. However, issues regarding the footprint and height of the proposed building are not minor in this particular case. There is no substantive evidence before me that the Council failed to properly consider the merits of the application at the time of determination. The refusal was based on sound planning reasons.
8. I find that the Council did not behave unreasonably by withholding planning permission because it found that the proposal was in conflict with the development plan and material considerations did not indicate that the proposal should be determined other than in accordance with it.
9. Contrary to the applicant's claim, the Council did not demand a flood risk assessment (FRA). The applicant submitted an FRA, of their own accord, as part of the appeal. Therefore, it cannot be fairly asserted that the Council misinterpreted its own policies and guidance, or indeed the Framework, PPG or Environment Agency advice, by requesting an FRA because they did not. Instead, the Council's Officer Report referred to the need for proposals to be accompanied by a drainage strategy, in accordance with Policy BSU14 of the Brent Local Plan 2019-2041 (February 2022) (the BLP). While the applicant argues that a drainage strategy could be secured by a condition, it is evident that Policy BSU14 requires such strategies to be submitted with development proposals.
10. The Council's Officer Report clearly articulated specific concerns regarding the proposal's impact, referencing relevant policies, site-specific factors and material considerations. The reasoning was detailed and supported by evidence, including reference to the site, the surrounding area and the development plan. The Council's conclusions were reasonably and properly reached based on a thorough analysis of the available information, and not on vague or unfounded assertions.
11. The applicant contends that the Council's Officer Report made misstatements and misinterpretations of the proposal. This includes how future occupiers would access the rear garden from within the house. However, I find that the Council's Officer Report understood that there would be direct access from within the house to a patio area but that direct access to the garden area would not be provided. I concur with the Council's interpretation of the submitted plans. Future occupiers of the dwelling would have to exit the house using the front entrance and external staircase to access the garden which is below the patio area. The applicant indicates that there would not be a significant change in levels between the patio

and the garden. However, this is based on amended plans that I have not accepted for the reasons given in the appeal decision.

12. The applicant asserts that the Officer Report exaggerated the differences between the extant consent (22/2293) and the proposed development by describing the proposal as resulting in a substantial increase to the building with the addition of a rear raised terrace/ platform. However, based on the evidence before me, this would be an accurate description of a key difference between the two schemes.
13. The applicant argues that the Council's claim that the proposal would result in an 'overwhelming vertical visual emphasis' lacks any evidential or objective analysis. However, the Officer Report provides clear reasons for this statement, including the effect of the proposed fenestration pattern, roofscape and basement floor on the character and appearance of the area. Thus, it cannot be reasonably argued that the Council's comments were baseless.
14. While railings and planting form part of the existing boundary treatment in the site and the surrounding area, it is nevertheless open to the Council's opinion that the proposed railings around the building would be 'harsh and imposing'. As noted in the appeal decision, the railings proposed around the patio area would be prominent due to their elevated position above street level.
15. While I agree with the applicant that a condition requiring landscaping to be maintained for the lifetime of a development is both enforceable and reasonable, it would be a moot point given that such a condition would not sufficiently mitigate for the harm identified to the character and appearance of the area by virtue of the proposal's scale, bulk, massing and architectural detailing, as set out in the appeal decision.
16. The applicant suggests that the Council's behaviour mirrors its conduct in two previous applications for costs¹ at the same site where costs were awarded. However, the grounds for those previous cost applications are materially different to this application. Therefore, they are not relevant to this decision.
17. The applicant assert that the Council has failed to take account of case law² which indicates that subterranean features are not material to scale and do not impact the building's external form'. However, in the case of the proposed scheme, approximately half of the basement floor would be exposed above ground level, thereby contributing to the external form of the building and increasing its overall height.
18. The applicant contends that the Council failed to consider past appeal decisions³ relating to the same site. However, it is evident from the Council's Officer Report that past appeal decisions were considered in noting the previous Inspectors' concerns.

Conclusion

19. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG,

¹ Ref. APP/T5150/W/22/3312444 and APP/T5150/W/22/3299035.

² MMF (UK) Ltd v Secretary of State for Communities and Local Government & Anor [2010] EWHC 3686 (Admin).

³ Ref. APP/T5150/W/22/3312444 and APP/T5150/W/22/3299035.

has not been demonstrated. Therefore, the application for an award of costs is refused.

U P Han

INSPECTOR