



Costs Decision

Hearing held on 29 April 2025

Site visit made on 29 April 2025

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date 19th May 2025:

Costs application in relation to Appeal Ref: APP/K5600/Y/25/3358638

39 Harrington Gardens, London SW7 4JU

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Woolf for a full award of costs against the Council of the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of listed building consent for creation of WCs and shower rooms to serve the two guest bedrooms on the fourth floor.
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Decision

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

Reasons

2. 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.
3. The costs application, the Council's rebuttal and the applicant's final comments were all made orally at the hearing. The application was made on procedural and substantive grounds. The applicant submits that much of what was discussed at the hearing and during the appeal should have been dealt with sooner, and makes particular reference to the additional plans, that I shall refer to as the servicing plans. The servicing plans were submitted to the Council before it made its decision, to seek to address a matter raised by the Council, but the Council did not take them into account in its decision.
4. The servicing plans provided additional detail to show proposed drainage runs and extraction and are directly relevant to the second refusal reason. This refusal reason starts with the phrase 'due to the lack of information' – yet that information had been submitted. The applicant submitted the information again with the appeal, yet despite its relative simplicity the Council disregarded these plans until the pre-hearing note was issued.
5. The PPG advises that a Local Planning Authority is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The servicing plans did not seek to vary or modify the scheme but were submitted in direct response to the Council's concern about a lack of detail. At the appeal stage they served to provide the information that the Council found to be lacking, addressing the second refusal reason.

6. Following the pre-hearing note the Council assessed the plans and found that they could be acceptable, subject to the provision of a condition to secure details of the vent tiles. At the hearing no further issues were raised by the Council regarding the servicing plans. Had the Council assessed these plans it is therefore likely that the second refusal reason would not have been necessary. Failing that, if the Council assessed the plans at the point that it prepared its appeal statement it would have most likely resulted in a narrowing of the matters of dispute; both outcomes would have reduced the expense associated with the appeal.
7. The applicant also submits that the Council failed to identify any good reason why it departed from previous decisions, including the previous Inspector's views on the fourth floor changes that are set out in the decision dated 6 February 2025¹. Evidence suggests that the Council fully accepted that position initially and advised the applicant that it would support a new application. Subsequently, following the decision to quash this previous decision, the weight the Council gave to the Inspector's position changed. This change was a significant change in circumstances that gave the Council reason to change its view and in doing so to revert to its previously held position; a situation which is quite different to that of the Elmbridge case². I do not find this to be unreasonable behaviour.
8. The applicant also submits that the Council failed to properly engage with the heritage benefits of the proposal in terms of fabric restoration. The applicant set out a list of public benefits in an email to the Council before it made its decision. Although listed in the email, these suggested benefits are not detailed on the submitted plans. Neither are they set out in the Heritage Statement or Design & Access Statement. The latter includes a reference to removing the service cupboard; yet this is shown as removed on the plans, and did not exist at my site visit, and I note that its removal was subject to an earlier consent.
9. In its reply to the applicant's email the Council stated that the other heritage benefits are not the subject of this application, and, with reference to paragraph 215 of the National Planning Policy Framework, I agree that these other works could not reasonably be considered public benefits of the *proposal*. This is a reasonable position for the Council to reach based on the submissions, and the focussed nature of the proposal. I do not therefore find that the Council behaved unreasonably in this respect.
10. In summary, I have found that unreasonable behaviour occurred in relation to the Council's failure to properly review the service plans. The applicant has spent time and effort addressing this matter in the submissions and at the Hearing. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the Royal Borough of Kensington and Chelsea shall pay to Mr James Woolf, the costs of the appeal proceedings described in the heading of this decision

¹ Planning Inspectorate Refs: APP/K5600/W/24/3350392 and APP/K5600/Y/24/3350391

² R. (on the application of Davison) v Elmbridge Borough Council, 2019

limited to those costs incurred in relation to the second refusal reason and the servicing plans; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to the Council of the Royal Borough of Kensington and Chelsea, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Tucker

INSPECTOR