
Costs Decision

Site visit made on 8 April 2025

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 20th May 2025

Costs application in relation to Appeal Ref: APP/T5150/W/24/3353800 97A Acton Lane, London NW10 8UT

- 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 Simon Finkelstein 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 a change of use from the basement shop to residential.
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Decision

1. The application for an award of costs is 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 PPG indicates that local planning authorities will be at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal at appeal; vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis; and where similar cases have not been determined in a similar manner.
4. The applicant considers that the Council incorrectly assumed that external alterations, including a new shopfront, were proposed when no such works were included in the application. While I note that the entrance to the left of the shopfront window is labelled differently between the plans for the existing and proposed front elevations, there appear to be no substantive changes between them. The doorway previously described as "entry" has simply been relabelled as "entry to lower ground." Although this indicates some form of external works, there is no evidence before me to suggest that these amount to substantive alterations requiring express planning permission.
5. While I acknowledge the Council's concerns that the original shopfront has been altered through the removal of shuttering to the commercial premises, the existing drawings do not depict any such shuttering. Furthermore, no supporting evidence -

such as photographs or previously approved plans - has been submitted to demonstrate that the existing lawful façade included these shutters. As such, the Council has not provided substantive evidence to support its position that the proposal includes external alterations beyond the limits of permitted development. Accordingly, it has not been adequately demonstrated that this was a reasonable ground for refusal.

6. The applicant also considers that the Council's concerns were based on speculative assumptions regarding the potential use of non-habitable spaces as bedrooms. Nonetheless, as discussed in the appeal decision, I consider these concerns to be reasonably founded. The rooms are of a size and configuration capable of supporting habitation, as evidenced in earlier proposals. In a small or constrained site, the inclusion of multiple generously sized ancillary rooms, such as a linen store and laundry room, appears disproportionate. Moreover, the applicant has not provided a clear or functional explanation for the presence and scale of these rooms.
7. As such, it was not unreasonable for the Council to be concerned that the proposed development could lead to these rooms being used as habitable spaces, notwithstanding the conclusions of the Daylight and Sunlight Report. While I have found that a planning condition could, in principle, have addressed this concern, no specific wording was put forward by the applicant to demonstrate how such a condition might effectively control the use of the rooms in question. In the absence of a clearly drafted condition that could reasonably be imposed, the Council was not in a position to assess whether its concerns could be adequately mitigated. Accordingly, I do not consider that the Council acted unreasonably in maintaining its objection, having regard to the particular circumstances of the site and the nature of the development proposed.
8. Having found that the Council acted unreasonably, it is necessary to consider whether, and to what extent, that unreasonable behaviour resulted in unnecessary or wasted expense. In this case, the Council's failure to properly substantiate its concerns regarding the external alterations to the shopfront led the applicant to prepare evidence and arguments to address those concerns, which would not otherwise have been necessary. I therefore conclude that the applicant incurred unnecessary expense in relation to that part of the appeal. However, I do not consider that the Council's behaviour in relation to the use of non-habitable spaces as bedrooms amounted to unreasonable behaviour, or that it caused the applicant to incur wasted or unnecessary costs on that issue.
9. For the reasons given, I 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

10. 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 London Borough of Brent shall pay to Mr Simon Finkelstein, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in appealing the reason for refusals in relation to external alterations of the

shopfront; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Lo

INSPECTOR