



## Costs Decisions

Site visit made on 21 January 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

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### **Costs application in relation to Appeal A Ref: APP/X5210/X/24/3351948**

#### **38 - 40 Windmill Street, London, W1T 2BE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by T&CPP Limited for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the siting of a container.

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### **Costs application in relation to Appeal B Ref: APP/X5210/X/24/3351952**

#### **38 - 40 Windmill Street, London, W1T 2BE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by T&CPP Limited for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the siting of a shipping container for use ancillary/incidental to the lawful residential use.

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### **Costs application in relation to Appeal C Ref: APP/X5210/X/24/3345029**

#### **38 - 40 Windmill Street, London, W1T 2BE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by T&CPP Limited for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the refusal of a certificate of lawful use or development for a shipping container for use incidental to the lawful residential use.

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### **Costs application in relation to Appeal D Ref: APP/X5210/X/24/3358455**

#### **38 - 40 Windmill Street, London, W1T 2BE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by T&CPP Limited for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the refusal of a certificate of lawful use or development for use ancillary/incidental to the residential use.

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### **Costs application in relation to Appeal E Ref: APP/X5210/X/24/3358238**

#### **38 - 40 Windmill Street, London, W1T 2BE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by T&CPP Limited for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the refusal of a certificate of lawful use or development for the siting of a shipping container for use ancillary/incidental to the lawful residential use.

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## Decisions

1. The applications for an award of costs are refused

## 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. With respect to appeals A and B, the main thrust of the applicant's case is that, if it is accepted that the containers, the subject of the appeals are not a building, the Council's refusal to grant a Certificate within the prescribed time is unreasonable behaviour which led to the lodging of an appeal which would have been unnecessary.
4. Where the local planning authority (LPA) has failed to determine an application within the time limits, the PPG advises it may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
5. An email, dated 8 March 2024, from a Planning Assistant of the Council, advised that the fee would be £129 plus an admin fee of £39, giving a total of £168. I have been provided with an email dated 9 July 2024 in respect of 2024/2186/INVALID and 2024/2187/INVALID, which advises the appellant's agent 'You have paid £168 for each application, however, the correct fee is £170.5(Certificate of lawfulness (Proposed) fee of £129 + administration fee of £41.5). Please pay the outstanding balance of £2.5 for each application. The applications remain invalid until the application fee has been received.'
6. In an email dated 10 July 2024, the Council officer advised the agent they have until Friday to pay the outstanding balance. If payment isn't received by then, the applications will be withdrawn from our system.
7. The difference in the fee appears to relate to an admin fee which the Council has added to each of the applications. The basis for the admin fee is not clear and the Council has not expanded upon this either through its evidence or in response to the costs applications. The applicant's agent queried the amount requested, given advice received previously from the Council regarding the fee. It is not clear whether the query was responded to in substance, though the agent indicated they considered the correct fee had been paid and that they would appeal for non-determination if the applications were not determined within 8 weeks.
8. The planning officer sent an email to the agent on 11 July 2024, confirming that the applications have been withdrawn and the fees paid will be refunded, minus and [sic] admin fee. This was a day before the officer indicated the applications would be withdrawn. In my view, the Council's decision to withdraw the application and return the fee prior to the time period given to the applicant's agent was unreasonable. Moreover, as set out in my appeal decisions, I have found on the evidence before me, that the correct fee was paid and that the applications were valid.

9. Nevertheless, while I have found the Council's behaviour in relation to appeals A and B was unreasonable, it is clear from the Council's statement of case and subsequent applications, that the Council would have refused the applications. Furthermore, I have found that had the Council refused to grant a certificate of lawful use or development in respect of the proposals, those refusals would have been well-founded and that the appeals should fail. Even if the Council had determined the applications, therefore, the appeals would still have been necessary, and so the applicant has not incurred wasted expense.
10. With respect to appeal C, the applicant states that the container, the subject of the appeal, is not a building and, if this is accepted, its proposed siting within the appeal site, for use ancillary to the lawful use is not development for which planning permission would be required. In light of this, it is asserted that the Council's refusal to grant a Certificate within the prescribed time is unreasonable behaviour which led to the lodging of an appeal which would have been unnecessary.
11. The Council did issue a decision in respect of appeal C. As can be seen from my DL, I have found that the Council's refusal was well founded. It follows that the Council was not unreasonable in refusing the application and the appellant has not incurred wasted expense in making the appeal.
12. With respect to appeal D, the applicant's costs application is made on the basis that the Council has not substantiated its reasons as to why it maintains the subject of appeal 3358238 (appeal E) is not a caravan in the face of a Counsel's opinion that concludes that it is, and that if it is concluded that it is a caravan, then the decision to refuse a certificate for appeal 3358455 would not be well founded as the only difference between the two containers is that one is equipped for human habitation and one isn't. With respect to appeal E, the applicant's costs application is made on the basis that the Council has not substantiated its reason for refusing to issue a Certificate.
13. However, the Council has set out its reason for refusing the applications within its decision letters and has expanded upon this in its statement of case submitted in support of appeals D and E. While I have not agreed with the Council's approach to the consideration of 'context' in light of the approach established in *Wyre Forest BC v Allen's Caravans* [1990] 2 WLR 517, I have found that the Council's refusals were well founded. It follows that the appeals would still have been necessary and that the applicant has not incurred wasted expense in appealing the Council's decisions.
14. The applicant suggests they would have withdrawn subsequent appeals, had a determination been made by earlier regarding previous appeals. However, the aim of the costs regime is, amongst other things, to discourage unnecessary appeals. There is no time limit in which to appeal against refusal of a lawful development certificate. It should therefore be unnecessary for the applicant to submit a number of appeals for substantively the same proposal.
15. I note the Council's concerns that the applicant has submitted multiple applications for putting similar structures on the roof of the building. The Council advise that the applicant did not engage with the Council's pre-application service and has asked that I am mindful of this in considering my ability to initiate an award of costs. Although I have the power to initiate an award of costs, that power is discretionary.

16. The PPG advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. While the applications submitted by the appellant are similar, the applicant has not, to date, received an appeal decision that the proposals would not be lawful. Given the above, I decline to use my power in this instance.
17. The applicant has drawn my attention to appeal reference APP/X5210/X/23/3333230, which concerned an appeal against the Council's failure to give notice of its decision within the appropriate period on an application for a certificate of lawful use or development for the siting of a caravan for use ancillary to the lawful residential use of the land. In that case, it seems the Council was considering granting the LDC. That is quite different to the circumstances of the cases before me and does not lead me to a different conclusion/s.

### **Conclusions**

18. For the reasons given above, I conclude that unreasonable behaviour by the Council of the London Borough of Camden, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*M Savage*

INSPECTOR