
Costs Decision

Site visit made on 2 July 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 11 August 2025

Costs application in relation to Appeal Ref: APP/Q3630/X/25/3360379 Hamilton Nursery, Lynn Crossing Road, Chertsey KT16 0AT

- 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 Mr and Mrs Steve Smallldridge for a full award of costs against Runnymede Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as B8 Storage & Distribution.
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Decision: the application is refused

Reasons

1. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include the failure to produce evidence to substantiate each reason for refusal.
2. The applicant's grounds for making this costs application are only briefly stated and do not specifically identify any aspect of the PPG in relation to the award of costs with which the Council's behaviour is said not to comply. Nevertheless, on my reading, the essence of the applicant's claim for costs is a failure on the part of the Council to assess the evidence properly.
3. In this context, the applicant alleges that the Case Officer for the Council has applied unreasonable burden¹ on the evidence submissions, insofar as he has acknowledged that the use of the site has had storage since 2010 but then seeks to diminish this by saying that some Google Earth images show a lesser volume of use. The applicant therefore considers the Council's Case Officer fails to understand that a B8 Storage & Distribution use will have variations in the use, especially when companies are using and moving materials.
4. The applicant acknowledges that whilst the burden of proof is on him to demonstrate the lawfulness of the use, the Council nonetheless have a duty to consider the evidence fairly to the appropriate burden and not to invent scenarios and assessments based upon what is not evidenced. The

¹ The applicant does not explain what is meant by the term 'unreasonable burden' but I take this mean that, in the applicant's view, the Council's Case Officer did not correctly apply the civil burden of proof of the balance of probabilities.

Council's Case Officer clearly states the use was ongoing and that is where the assessment should have rested, with the LDC application being approved.

5. The applicant accordingly considers that the actions of the Council's Case Officer to incorrectly assess the evidence and by applying a misinformed burden to the evidence, has led to unnecessary costs of the appeal being incurred. The applicant points out that he did not instantly appeal the refusal of the LDC and sought to overcome the refusal by resubmitting. Nevertheless, the Council's Case Officer continued to apply the same approach.
6. The Officer Report for this application (Council Ref:RU.24/1451) sets out the information that had been submitted with the application at paragraph 6.15, and lists it there as:
 - planning statement
 - the applicant's statutory declaration
 - 7 x further statutory declarations
 - financial accounts and invoices
 - aerial images of the site
 - details of the enforcement history
7. The applicant does not suggest that there are any significant omissions from that list, such that vital evidence was not taken into account. The Officer Report then goes on to consider that evidence under the heading of 'Review of evidence'. There then follows some seven paragraphs in which the evidence is appraised and evaluated, culminating in paragraph 6.24 where it is concluded that:

Overall, it is not considered that the evidence is sufficiently clear and unambiguous to conclude, on the balance of probability, that the application site has been used continuously for storage and distribution for a period of at least 10 years.
8. That one sentence neatly encapsulates all the relevant tests established in case law, and states in terms that the Council was employing the correct civil burden of proof of the balance of probabilities. I recognise that the preceding paragraphs of the Officer Report did not consider individually each piece of evidence, but there was no need for it to do so. It is evident from the list at paragraph 6.15 of the Officer Report that the totality of the evidence was considered.
9. In relation to the aerial images, paragraph 6.10 of the Officer Report refers to the previous LDC application (Council Ref: RU.24/0078) and says this:

"Relying on the aerial images, the rear half of parcel B does not appear to have been used for storage until around 2015, and at that point items are contained only sporadically across the land. A clear increase in the extent of the use of parcel B can be seen within aerial images from 2019 onwards, at which point it would appear to be fully utilised a part of a storage and distribution yard, however before that time it is not clear whether a material change in use of the land, which could have been enforced against, had taken place".
10. There is nothing wrong in the approach taken by the Officer Report in that respect. To take an extreme example, if B8 Storage & Distribution was shown in an aerial photograph to be taking place in just one small corner of the

0.47ha of Area B (say, for the sake of argument, amounting to 5% of the total site area) and not on any other part of Area B, it could not reasonably be said that as a matter of fact and degree the use for B8 Storage & Distribution was taking place across the whole of the planning unit at that time. Exactly the same approach was taken in paragraph 6.10 of the Officer Report, albeit the analysis required a more nuanced judgement of the area being used for B8 Storage & Distribution as a matter of fact and degree.

11. I make no criticism of the Council in that respect: indeed, I carried out exactly the same exercise in arriving at my Decision on the appeal and exercised my own judgement as a matter of fact and degree. It was entirely open to the Council's Case Officer to reach the conclusions that he did as a matter of professional judgement. Furthermore, the assessment made by Council's Case Officer quite correctly did not rest with the finding that the use was ongoing and properly went to apply the judgements required under relevant case law.
12. It is evident from the Officer Report that the evidence taken as whole was properly assessed. Moreover, there is nothing before me to suggest that the Council's Case Officer invented scenarios and assessments based upon what is not evidenced.
13. The applicant also makes a discrete point, as I understand it, that notwithstanding the labelling of Area A and Area B for ease of reference only (B being the appeal site), Hamiltons Nursery is all one planning unit. I covered that point in my main Decision in some detail and therefore do not repeat that here. For present purposes, it is sufficient to say here that pursuant to the judgment in *Burdle*, Area B ought to be considered as a separate planning unit.
14. The PPG is quite clear: costs may only 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. I find that the Council has not acted unreasonably in the terms set out in the PPG at any point in the appeal process or beforehand. In the absence of any unreasonable behaviour, the PPG makes it clear that any award of costs is not justified.

Paul Freer
INSPECTOR