



Costs Decision

Hearing held on 8 July 2025

Site visit made on 8 July 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 11 August 2025

Costs application in relation to Appeal Ref: APP/T5150/X/25/3363659

274 Watford Road, Harrow, Middlesex HA1 3TT

- 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 Kishan Parshotam for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of to issue a certificate of lawfulness of existing use or development for the demolition of the outbuilding and the erection of a new outbuilding.
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Decision

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

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 main thrust of the costs application is that the Local Planning Authority (LPA) acted unreasonably in both procedure and substance, causing unnecessary and wasted expense by: failing to determine the application within the 8 week timeframe; introducing new arguments months after refusal; failing to disclose enforcement action contemporaneously; misrepresenting local policy on demolition; and not acting upon efforts to resolve the planning matters in contention.

Date of determination

4. The grounds for the application for costs refer to the LPA's failure to determine the application within the statutory timeframe and therefore the applicant considers that the decision dated 7 October 2024 was not legally sustainable and that the development was, at the material date, lawful for the purposes of sections 191 and 171B of the 1990 Act. Therefore, the refusal is considered demonstrably contrary to established statutory and case law principles and has no reasonable basis on the evidence available to the LPA at the date of its determination. The applicant considers that on a s195 appeal, the Secretary of State (SoS) is required to determine whether the refusal is well-founded as at the date of the application. If it is not, the certificate must be granted.
5. Section 193(1) of the 1990 Act provides that an application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order. Article 39 (10) of The Town and Country Planning

(Development Management Procedure) (England) Order 2015 states that where a valid application has been received, the local planning authority must give the applicant written notice of their decision within—

(a) the period of 8 weeks beginning with the day immediately following that on which the application is received; or

(b) unless the applicant has already given notice of appeal to the SoS, within such extended period as may be agreed in writing between the applicant and the authority.

6. The application was declared on 25 July 2024 and validated by the Council on 12 August 2024¹. The decision was issued within 8 weeks on 7 October 2024.

7. Notwithstanding that, s195 relates to appeals against refusal or failure to give a decision on an application. Section 195(1) states that “where an application is made to a local planning authority for a certificate under section 191 or 192 and —

(a) the application is refused or is refused in part, or

(b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority,

the applicant may by notice appeal to the Secretary of State.”

Introducing new arguments

8. Section 195(2) and (3) provide that, on appeal, the SoS shall grant an LDC if the LPA’s refusal is not ‘well-founded’ and the SoS shall dismiss the appeal if the refusal is well-founded. Well-founded refers to the LPA’s decision, not the reasons for the decision.

9. Section 195 appeals are strictly limited to a review of whether the LPA’s decision is well-founded. However, they are invariably treated as de novo appeals. The parties may submit additional evidence at the appeal stage which was not before the authority at the time of its decision. Moreover, the application being appealed is made to ascertain what would be lawful. If the evidence taken as a whole suggests that the matter in question would not be lawful, it would be wrong to grant an LDC, even if the LPA had different reasons for reaching the same conclusion.

10. It was held in *Cottrell v SSE & Tonbridge and Malling BC* [1982] JPL 443 that the SoS cannot be compelled to issue a certificate when they are of the opinion that one should not be granted. This was an Established Use Certificate case but applies to LDCs. Thus, any relevant fresh evidence advanced at the appeal should be considered, including where this evidence was not advanced at application stage.

11. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. The burden of proof in LDC appeals rests on the appellant, who must demonstrate that, on the balance of probabilities, their proposal would be lawful at the date of the application.

¹ LPA Statement page 27

Failing to disclose enforcement action contemporaneously

12. The breach of condition enforcement notice served by the LPA during the LDC application was subsequently withdrawn before coming into force. It had no bearing on the LDC application or the LPA's reasons for refusal and it had no bearing on the appeal.

Misrepresenting local policy on demolition

13. I note the Sudbury Court Conservation Area Guide 2015 refers to planning permission being required to demolish a structure over 115 cubic metres, however, this is guidance rather than policy. The LPA considered that as the building was unlawful, it did not benefit from any permitted development rights. While the LPA's explanation may have been brief, it provided the relevant section of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and The Town and Country Planning (Demolition – Description of Buildings) Direction 2021 that refer to permitted development rights for any building operation consisting of the demolition of a building. Accordingly, I am not of the view that the LPA did misrepresent policy on demolition, and this is supported in my accompanying decision letter for the LDC appeal.

Efforts to resolve the planning matters

14. The applicant has made repeated attempts to engage with the LPA to resolve, what they consider to be misunderstandings, and for a Statement of Common Ground (SoCG) for the appeal. This has included phone calls and email follow-ups. They consider that the persistent lack of engagement has undermined the procedural efficiency of the appeal and increased their costs.
15. The LPA sets out that it was flooded with calls and emails from the applicant to the extent that it accepts that some were not answered or replied to but considered that it had done its best to satisfy the applicant and has responded to his requests as soon as it was able. From the correspondence, the LPA made its position clear regarding the planning matters at the appeal site and suggested that the way forward for the applicant was to withdraw the appeal and make a planning application. While it was the applicant's prerogative for the appeal to remain to be determined, it seems to me that there was confusion on the applicant's part between the breach of condition that the LPA accepted had gained immunity from enforcement action, and the alleged use of the outbuilding to a single dwellinghouse and thereby the creation of a separate planning unit.
16. Notwithstanding this, from the copies of correspondence between the parties, it is likely that there would have been limited benefit from an SoCG. Furthermore, even though I concluded differently to the LPA on the matters regarding how the outbuilding had been used, this is a planning judgement based on the facts presented and does not indicate a flawed decision made by the LPA.

Conclusion

17. For the reasons given above, I do not consider that the LPA failed to properly evaluate the LDC for the proposed use as sought. I find that there was no fundamental defect in the LPA's approach in its decision making and the LPA was entitled to make the judgement it did based on its interpretation of the GPDO, and the information supplied.

18. An award of costs is only justified if unreasonable behaviour is the cause of unnecessary or wasted expense. I am not persuaded, having regard to the facts and circumstances, that it has been demonstrated that the applicant has incurred unnecessary or wasted expense in connection with the appeal. The Council was not persuaded by the evidence presented and thus acted in accordance with the Act in its refusal. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR