Planning Inspectorate

Costs Decision

Inquiry held on 20 March 2025

Site visit made on 19 March 2025

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13th August 2025

Costs application in relation to Appeal Ref: APP/A5270/C/24/3348494
8 Lyon Way, Greenford, London, UB6 0BN

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Council of the London Borough of Ealing for an award of costs against Luxural Limited.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of premises to a mixed use including industrial warehouse at ground level on first floor level with ancillary office space, multiple offices (Use Class E (g) (i))1 at ground, first and second floor level, a place of worship at first floor level and the children sensory therapy clinic at 2nd floor level ("the Unauthorised Use")

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably in the appeal process and thereby caused the party applying for costs to incur unnecessary or wasted expense. The PPG lists examples of behaviour whereby an award of costs may be justified on procedural and substantive grounds. The list of examples should not be regarded as exhaustive.

3. 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.

4. The costs application was made in writing and the appellant provided a written response. The application is made on both a procedural and substantive basis.

Procedural claim

5. When the appeal was lodged, it was initially allocated the Written Representation Procedure. The Planning Inspectorate (PINS) changed the procedure to an Inquiry as it was determined evidence would need to be heard and tested under oath. The Council maintains that the appellant submitted limited information at the outset of the appeal but then submitted over 2000 pages of evidence which the Council received 10 days before the Inquiry. The Council states that it was forced to go

through a large amount of evidence in a very short period of time. The Council states that not objecting to the proof of evidence does not make the appellant's behaviour reasonable.

6. The appellant indicates that he complied with the procedural timetable and was entitled to supplement the evidence he had already submitted. The appellant states that had the evidence been submitted earlier the Council would still have had to read it albeit over a longer period of time.

7. The timetable for the submission of evidence was set out in the post CMC note which had been discussed and agreed at the CMC. The appellant met the timetable for the submission of evidence.

Conclusion on procedural claim

8. Whilst it would have been preferable for the appellant to have submitted the documentary evidence at an earlier stage of the appeal, the appellant did comply with the procedural timetable. I do not find that procedurally there was unreasonable behaviour. The Council has also not stated how the short timescale meant that the Council incurred unnecessary or wasted expense.

Substantive Claim

9. The Council states that the ground (d) had no reasonable prospect of success when it was common ground that the appeal site is in mixed use, was a single planning unit and two of the elements of that mixed use did not exist before 1 November 2023. The Council considers that its defence of the ground (d) appeal represented wasted cost and that in the absence of a ground (d) appeal, then there would have no need to have an inquiry and the entire cost of the inquiry was wasted costs. The Council's view is that the appellant should have run a ground (c) not a ground (d) if the appellant's argument was that the additional components were not material.

10. The appellant maintains that the introduction of further elements to an existing mixed use during the relevant 10 year immunity period is not automatically fatal to its ground (d) argument. It is necessary for the additional components to be assessed and the appellant was entitled to run that argument. The appellant considered that grounds (b) was not appropriate as the mixed use alleged was correctly described and ground (c) was not appropriate as there had been a change of use in 2014. The appellant was not arguing that the matters alleged which was a single mixed use did not require planning permission.

Conclusion on substantive claim

11. The appellant did not dispute that a material change of use had occurred which required planning permission. The appellant put forward the case that the material change of use took place in 2014 and continued throughout a period of 10 years. That was the appellant's case.

12. The appeal under ground (d) was dismissed because it was not demonstrated in a precise and unambiguous way, on the balance of probabilities, by the appellant that the addition of the POG and Sensory Child uses in the extension in 2023, which were additional components in the mixed use did not constitute a second material change of use to a different mixed use to that which had begun in 2014. The assessment of the appellant's evidence was a matter of judgement and just

because I disagreed with the appellant on this point does not make the appellant's pursuit of that argument unreasonable. I do not consider that the appellant acted unreasonably in pursuing a ground (d) argument particularly in light of the relevant case law.

13. When the appellant was arguing that components of the mixed use did not alter the nature of the mixed use that was taking place prior to those additions, ground (d) does appear to be more appropriate than ground (c). Even if the argument had been advanced under ground (c) it would have required a factual inquiry due to the nature of the argument.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice has not been demonstrated and that a full award of costs is justified. The application for an award of costs is refused.

E Griffin

INSPECTOR