



Costs Decision

Site visit made on 23 July 2025

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 August 2025

Costs application in relation to Appeal Ref: APP/U5930/W/25/3363451 49 Lincoln Street, Waltham Forest, Leytonstone E11 4PZ

- 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 Sudan Mahendran for a full award of costs against the London Borough Council of Waltham Forest.
 - The appeal was against the refusal of planning permission for subdivision of land at No. 49 Lincoln Street and construction of a three storey building (Including lower ground floor level) to create a semi-detached single dwelling house (1-bedroom two person dwelling - Use Class C3). Associated works to include; hard and soft landscaping, boundary treatment, solar panels, refuse storage and cycle storage.
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Decision

1. The application for an award of costs is partially allowed as set out in the terms 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 outlines examples of unreasonable behaviour by local planning authorities, both procedural and substantive. This costs application cites alleged failures such as not attending a site visit, refusing permission on issues that could be conditioned, presenting inaccurate arguments, acting against case law, a lack of application engagement and requiring a planning obligation that allegedly conflicts with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the National Planning Policy Framework.
4. The applicant is adamant that a site visit was not undertaken. This is refuted by the Council. There is no convincing evidence before me to suggest that a site visit did not take place. I am also cognisant that there is no definitive statutory requirement for a Council to undertake a site visit. Therefore, in principle, this is not unreasonable. It would therefore not be a demonstration of unreasonable behaviour for the purposes of this decision.
5. It is argued that planning conditions could have addressed two refusal reasons. While I agree with the Council that the submitted documents had shortcomings, I found that appropriately worded conditions could have resolved these prior to the commencement of development; as have the Council. However, the documents did not meet the requirements of the development plan, justifying a refusal on these matters and signalling the need for improvement in future submissions. The Council

noted that, had the proposal complied in other areas, they would have sought revisions or applied conditions. Therefore, this does not constitute unreasonable behaviour.

6. The applicant claims the Council made untrue arguments regarding crime and security, outlook, internal storage, and daylight. On crime, the appellant focused on burglary, but overlooked concerns about individuals avoiding visibility from the highway and visibility from the Police. Regarding outlook, the Council correctly noted the kitchen area was absent of an outlook and while I considered usage relevant in this particular case, the absence of outlook remains factual. I disagreed with the Council's view on internal storage but acknowledged that the relevant areas were only noticeable when clarified during the appeal. On daylight, the Council's concern about the lightwell is their planning judgment. I did not concur, but they are permitted to arrive at such a view on the basis of the evidence before them. Overall, this does not amount to unreasonable behaviour.
7. It is contended that the Council acted against case law. Previous planning decisions can be an important consideration in the decision-making process. Whilst each application must be assessed on its own merits, weight can be given to previous decisions by a decision maker in the planning application process. In this instance, the Council discussed the examples of development given by the appellant, noting the differences between these schemes and that proposed in this appeal. As such, I do not consider this behaviour to be unreasonable.
8. I now turn to the matter of an alleged failure of the Council to engage during the application. Even if this was the case, the capacity of planning departments is limited. The proposed scheme is for one dwelling of which a previous scheme had been refused. The appellant had an opportunity to submit a scheme which addressed the previous reasons for refusal. It was the view of the Council that this scheme did not address these previous reasons for refusal, and therefore, the Council provided a response on this application through their decision. I also note that pre-application advice was sought, and an officer conclusion was provided for a development at this site. I am therefore not of the view that the Council has neglected to engage with this scheme, due to its history of applications and pre-application advice.
9. My attention is now drawn to the reason for refusal which would require the applicant to enter into a planning obligation for several matters. However, during the appeal, the Council said it no longer wished to pursue five of the seven obligations it had originally refused the application on. This change was influenced by recent appeal decisions, which found that several of the obligations lacked sufficient justification and therefore did not comply with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
10. Given the Council's change of position, it is reasonable to assume that the appellant could not give clear instructions to their legal team, or had to revise their Unilateral Undertaking to reflect the Council's new position. In following the guidance set out in the PPG on Cost Awards, the suggestion that the appellant should enter into a planning obligation, to then withdraw several of these obligations, would amount to unreasonable behaviour to which it is possible that wasted expense has been incurred.

11. I conclude that the Council's revised stance on planning obligations would have resulted in unnecessary and wasted expense for the applicant. However, I do not consider the Council's conduct in other respects to constitute unreasonable behaviour, as alleged by the appellant.

Costs Order

12. 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 Council of Waltham Forest shall pay to Mr Sudan Mahendran, the time and work billable which was spent in drafting a Unilateral Undertaking, with specific regard to the discounted obligations which were requested by the Council in their decision.
13. The two remaining obligations which the Council continued to pursue at appeal are not included in this order. Therefore, the time and work billable is limited to the obligations sought on:
- section 278 Highway Works;
 - a condition survey of the carriageway and footways fronting the site;
 - a financial contribution towards improving sustainable modes of transport;
 - a financial contribution towards the monitoring of the Construction Logistics Plan; and,
 - a financial contribution of 5% towards monitoring fees.
14. The applicant is now invited to submit to the London Borough Council of Waltham Forest, who have also been sent a copy of this decision, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

J Smith

INSPECTOR