



Costs Decision

Site visit made on 3 July 2025

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 September 2025

Costs application in relation to Appeal Ref: APP/V5570/W/25/3362071 18 Bryantwood Road, London N7 7BE

- 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 Jakob Ollech for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the refusal of planning permission for the erection of ground floor rear and side extensions in association with the subdivision of the property to two self-contained flats (1 x three-bedroom (4p) and 1 x two-bedroom (4p) without complying with a condition attached to planning permission reference P2023/0151/FUL, dated 12 April 2024.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (“the 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 gives examples of unreasonable behaviour which may give rise to a procedural award of costs against a local planning authority, including “preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations”, “failure to produce evidence to substantiate each reason for refusal on appeal”, making “vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis”, “acting contrary to, or not following, well-established case law”, and “persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable”¹. The applicant’s claim for an award of costs falls within the scope of these five examples.
4. The appeal related to an application under section 73 of the Town and Country Planning Act 1990 (as amended), which provides for the determination of applications to develop land without compliance with conditions subject to which a previous planning permission was granted. The applicant sought the approval of amended plans reflecting the fact that two dormers had been added to the rear of the appeal property using (it is asserted) permitted development rights, and that consequently the internal layout and external appearance of the appeal property would differ from that previously approved. In particular, the two flats would be larger (in terms of area, though not bedrooms or bedspaces) than originally approved.

¹ Paragraph: 049 Reference ID: 16-049-20140306, Revision date: 6 March 2014

5. The PPG explains that “there is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission” ², and that “section 73 cannot be used to change the description of the development” ³. This reflects earlier caselaw including the *Vue*⁴, *Finney*⁵ and *Armstrong*⁶ judgments, the relevant points of which are summarised in my main decision.
6. The applicant drew the Council’s attention to an appeal decision in Lambeth (PINS Ref: APP/N5660/W/23/3332277), in which the Inspector also made an award of costs against the local planning authority. The Lambeth appeal decision summarised the *Finney* and *Armstrong* judgments in a way which, in my view, relates very closely to the circumstances of this appeal, at least insofar as the section 73 main issue is concerned. Nevertheless, when determining the application (and, indeed, during this appeal) the Council maintained that the description of development would need to be changed to reflect the fact that the two dormers would be retained, that the proposed amended plans would not be a “minor material amendment”, and that the scheme could not therefore be approved under section 73.
7. For reasons which are set out in my main decision, the amended scheme proposed would still fit comfortably within the description of development used in the original permission. The Council misinterpreted the relevant caselaw and appeal decision put before it, and in my view it would not be unfair to describe its reasoning in having done so (including the case officer’s comment to the applicant that the Lambeth appeal relates to “a different London Borough [...] of which I do not have a detailed understanding of the context, nor the full merits behind the appeal proposal” ⁷, and the comment in the officer report that “the approach to ‘shoehorn’ additional elements into a proposal after it has been approved is considered to be against the spirit of the S73 process”) as vague, generalised and inaccurate. This continued into this appeal where, as will be seen from my main decision, the Council’s reason for refusal in respect of the section 73 main issue was not substantiated.
8. In response to this costs application, the Council drew my attention to another appeal decision and costs decision at Gillespie Road in Islington (PINS Ref: APP/V5570/W/23/3315605), in which an appellant had also sought to amend the approved plans condition by way of a section 73 application. In that case, the Inspector found that “the works detailed on the submitted plans would therefore substantially exceed those detailed within the description of development for which planning permission was originally granted, conflict [between the description of development and the approved plans condition] would result” – the appeal was therefore dismissed, and the costs application refused.
9. However, a quick reading of the Gillespie Road decisions reveals that the development there was originally described as including “...extensions at ground, first and second floor levels including external terrace area at second floor level, rear dormer roof extension, solar panels and rooflight to front roof slope...”, while the changes sought would, among other things, have relocated the proposed

² Paragraph: 013 Reference ID: 17a-013-20230726 Revision date: 26 July 2023.

³ Paragraph: 014 Reference ID: 17a-014-20140306 Revision date: 06 March 2014

⁴ R(Vue Entertainment Ltd) v City of York Council [2017] EWHC 588 (Admin).

⁵ John Leslie Finney vs Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868.

⁶ Mikael Armstrong v SSLUHC & Cornwall Council [2023] EWHC 142 (KB).

⁷ E-mail to applicant’s agent, 5 February 2025, quoted in applicant’s appeal statement.

external terrace from second floor level to the third floor. The conflict between description and condition which would have arisen in that case is instantly apparent. There would be no such conflict in this case, so the Gillespie Road appeal does not support the Council's position.

10. I therefore find that the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised and inaccurate assertions about the proposal, did not follow well-established case law, and persisted with objections which were analogous to those addressed by my colleague in the Lambeth decision which had been put before it. In these respects, therefore, it acted unreasonably.
11. However, it is also of relevance here that a planning obligation was necessary to make the amended development acceptable in planning terms but, for the reasons set out in my main decision, I found that the Unilateral Undertaking submitted by the applicant had significant shortcomings. I therefore dismissed the appeal. It follows from this that I cannot find that the Council "prevented or delayed development which should clearly be permitted". In this respect, this appeal differs significantly from the Lambeth decision referred to above which has otherwise given the applicant's arguments considerable support; different decisions are therefore justified.
12. Furthermore, the PPG is clear that "where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application"⁸. For the reasons summarised above, and set out in greater detail in my main appeal decision, I consider that precisely describes the overall circumstances in this case, notwithstanding that several elements of the Council's behaviour in respect of the section 73 application were undoubtedly unreasonable in themselves.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, in the terms set out in the PPG, has not been demonstrated, and an award of costs is not warranted.

M Cryan

Inspector

⁸ Paragraph: 050 Reference ID: 16-050-20140306 Revision date: 06 03 2014