Planning Inspectorate

Costs Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2025

Costs application in relation to Appeal Ref: APP/W5780/X/24/3349301
378A Green Lane, Ilford IG3 9JU

- 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 Mrs Perminder Kaur Mudhar for a full award of costs against the Council of the London Borough of Redbridge.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for the use of ground floor rear as a self-contained flat.

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 (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. Paragraph 049[1] of the PPG highlights the examples of unreasonable behaviour by Councils where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that it delayed making a decision on an application which the applicant feels should clearly have been permitted. The applicant considers that the Councils reason for refusal was based on an illogical conclusion, with specific reference to a historical enforcement investigation at the site. Furthermore, the applicant contends the Council's decision was unsupported by objective analysis as they discounted evidence which did not encapsulate the entire four year immunity period. The applicant therefore alleges the Council unreasonably withheld an LDC, and thus the applicant incurred wasted expense in appealing the decision.

4. In terms of an LDC application, s191(4) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) states:

   If, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application […], they shall issue a certificate to that effect, and in any other case they shall refuse the application.

5. The burden is therefore, clearly on the applicant to provide sufficient evidence to the Council to demonstrate the lawfulness of the use sought. Otherwise, the Council is entitled to refuse the application. As stated in my appeal decision, both

[1] Appeals Paragraph: 049 Reference ID: 16-049-20140306

parties have erroneously referred to the period of four uninterrupted years for the use to be immune from enforcement action. As the provisions of the Levelling Up and Regeneration Act (LURA) came into effect on 25 April 2024, this pre-dated the submission of the LDC application and thus the relevant immunity period is ten years starting on 2 May 2014.

6. The Council's consideration of the LDC application included reference to their own information, which included an enforcement investigation conducted at the property in 2017. The Council closed this enforcement investigation considering at the time there was no breach of planning control, as there was no evidence that the ground floor had been used for residential purposes. I would acknowledge that the Council notes referred to are somewhat limited, as the details before me are silent on actual site observations, nor do they contain actual internal photographs. Nevertheless, this evidence cannot be dismissed as weak or illogical as the applicant suggests, because the onus of proof lays with the applicant.

7. I appreciate the applicant supplied extensive evidence in the form of statutory declarations and various other documentation, at both the application and appeal stages. The submitted information does provide a degree of assurance that the use at the rear of the ground floor as a self-contained flat appears to have been taking place since at least 2018. However, as the LURA now requires applicants to show ten years of uninterrupted use, in order to be deemed lawful, the information submitted to date is inconclusive to prove the required time frame, on the balance of probability.

8. As such, I reached the same conclusion as the Council – although its consideration that the four year bar applied here was incorrect - in that, based on the submitted evidence, it does not precisely or unambiguously demonstrate that the use as a self-contained flat has been in situ for ten years and thus become lawful. Given these findings, based on the submitted information, it is likely that the applicant would have needed to appeal the Council's decision regardless. Consequently, I find that the Council was not unreasonable in reaching the decision that it did.

9. As a result, I do not find that the applicants have been subject to wasted expense at the appeal stage. I consider that the costs incurred by the applicant in pursuing the appeal, were the normal costs arising when the right of appeal is exercised. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that no award of costs is justified.

Robert Naylor

INSPECTOR