



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: 20 October 2025

Costs application in relation to Appeal Ref: **APP/X5210/W/25/3363132**

31 Elsworthy Road, London NW3 3BT

- 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 Valouran for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the grant subject to conditions of planning permission for the erection of single storey rear extension; formation of basement with pool, a front lightwell, a side lightwell and basement rooflights in ground at rear; infilling of windows and formation of a door in side elevation; a rear planter; the replacement of front garage door with windows and the installation of five roof lights at roof level.

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. Paragraph 049 of the PPG gives examples of behaviour which may give rise to a substantive award of costs against a local planning authority. Among these there are two which, the applicant considers, are relevant in this case. These are “imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations”, and “not determining similar cases in a consistent manner”¹.
4. The applicant considers that the Council should not have imposed Condition 6 on the planning permission, as it did not meet the six tests set out in Paragraph 57 of the Framework. The appeal related entirely to this disputed condition, so it is considered at length in my main decision. I found that the Council appeared to have misunderstood some of what was proposed, notably that the scheme did not include mechanical cooling of the swimming pool area. Furthermore, the relevant development plan policies do not differentiate between “essential” and “non-essential” rooms, a distinction the Council had – at least in part – relied on. To this extent, therefore, elements of the disputed Condition 6 were not necessary, relevant, precise or otherwise reasonable, and the Council’s behaviour falls within the PPG’s definition of unreasonable.

¹ Reference ID: 16-049-20140306, Revision date: 06 03 2014

5. The second element of the applicant's claim relates to a grant of planning permission at No 2 Elsworthy Road² for a development which included mechanical cooling. In that case, the Council imposed a condition relating to an air-source heat pump without any requirement for it not to have a cooling function; the appellant also noted that one of the rooms to be cooled at No 2 would be a utility room rather than an "essential" habitable room. I have not been provided with full details of that permission, only the decision notice. However, it includes an "informative" explanatory note stating that active cooling would be limited to those rooms identified as being overheated in the submitted overheating report; as I have just set out, that is not the same as the situation in the appeal permission. The Council's different approaches reflect the different circumstances of the two proposed developments, and are not indicative of it having behaved unreasonably.
6. I have found that the disputed Condition 6 was flawed, and to that extent the Council may therefore be said to have acted unreasonably. In order to make an award of costs, however, I need to be satisfied that any unreasonable behaviour resulted in unnecessary or wasted expense.
7. Without the disputed condition, the planning permission would have allowed the use of mechanical cooling for the basement living/games room, a space where the submitted overheating assessment had shown it would not be necessary. As I have set out in my main decision, some form of condition relating to the proposed cooling system was necessary so that the scheme would comply with relevant development plan policies relating to climate change mitigation and adaptation, including the application of the cooling hierarchy.
8. The applicant's appeal submissions were based in part on an updated Thermal Modelling and Overheating Analysis, prepared after the grant of planning permission. Based on this, mechanical cooling was proposed during the appeal for different rooms when compared to the application as originally considered by the Council. It therefore seems likely to me that the applicant would have sought to challenge and amend the Council's original decision in any event, and they would still have incurred the costs of the appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, in the terms described in the PPG, has not been demonstrated.

M Cryan

Inspector

² LPA Ref: 2023/5350/P