



Costs Decision

Site visit made on 9 December 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2025

Costs application in relation to Appeal Ref: APP/L5810/C/23/3328549

Land at 50 and 50A Nelson Road, Twickenham TW2 7AU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Richmond Upon Thames for a partial award of costs against Mr Alan Bernard.
 - The appeal was against an enforcement notice alleging without planning permission and within the last four years the siting of two storage containers on the land to the rear of the main building.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (PPG) chapter on appeals advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030).
3. Paragraph 028 of the PPG explains that the aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. At paragraph 031, the PPG advises that 'unreasonable' has its ordinary meaning, as established by the Courts¹ and that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
4. The Council sought a partial award of their costs on what I have taken to be substantive grounds in respect of the ground (d) appeal. The application was made in writing, in accordance with the PPG at paragraph 035. In summary, the Council's case is that they had to respond to the hidden ground (d) appeal and the appellant acted unreasonably by claiming that the containers were immune from enforcement action whilst having knowledge that this was factually inaccurate.
5. The PPG at paragraph 053 stresses that the right of appeal should be exercised in a reasonable manner. It goes on to explain that an appellant is at risk of an award of costs being made against them on substantive grounds if their appeal had no reasonable prospect of succeeding. Paragraph 053 also makes it clear that in an enforcement appeal, the onus of proof on matters of fact rests with the appellant.
6. Although the appeal was not initially made on ground (d), I am bound to deal with any hidden grounds advanced. The appellant largely relied on a single aerial photographic image dated 25 March 2020, extracted from Google Earth, to support their claim of immunity from enforcement action. However, as that photograph was

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774

clearly taken less than four years before the notice was issued it provides little support for the appellant's case.

7. Besides, from a basic search on Google Earth it would also have been possible for the appellant to have accessed a sequence of dated aerial photographic images which include the premises. In particular, an image dated January 2020, in the Google Earth image sequence immediately prior to the dated image supplied by the appellant, shows that the containers were not in situ at the premises at the time. Also, other images dated before 25 March 2020 do not show the containers in situ at the premises. Therefore, the appellant would most likely have had access to and knowledge of factual evidence of sufficient clarity and precision to cast significant doubt on their claim.
8. Failure by an appellant to discharge the onus of proof would not, in itself, amount to unreasonable behaviour. Even so, the appellant chose to argue immunity from enforcement action whilst in all likelihood having access to factual evidence which would almost inevitably lead to a ground (d) appeal failing. This being the case, the ground (d) appeal had no reasonable prospect of success and the appellant has been unable to substantiate that ground of appeal. The absence of any meaningful response from the appellant, who was professionally represented, to the application for costs, does little to suggest otherwise.
9. The failure of the appellant to substantiate the ground (d) appeal has led to the Council incurring unnecessary expenditure through having to undertake additional work to defend the notice at appeal on that ground. Accordingly, the conditions for an award of costs at paragraph 030 of the PPG have been met.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Mr Alan Bernard shall pay to the Council of the London Borough of Richmond Upon Thames, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the ground (d) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The Council is now invited to submit to Mr Alan Bernard, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR