



Costs Decision

Site visit made on 5 June 2025

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

an Inspector appointed by the Secretary of State

Decision date: 13 January 2026

Costs application in relation to Appeal Ref: APP/C5690/W/24/3355539

122 New Cross Road, London SE14 5BA

- 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 Raj Patel for a full award of costs against the Council of the London Borough of Lewisham.
- The appeal was against the refusal of planning permission for a new building with nine flats to the rear of an existing building facing the street, below which the flats will gain access; the lower part of the existing building will be altered to house ancillary functions (refuse storage) etc.

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. Six separate points are made by the applicant in their claim. It was alleged that the Council did not attach due weight to their own previous decisions, and was thus inconsistent; that they did not attach due weight to an earlier appeal decision; that they disregarded an extant fallback scheme; that they did not treat the planning application consistently with one on a neighbouring site; that they disregarded existing flats on and near the site and thereby misapplied the “agent of change” principle; and that they did not give due weight to their own pre-application advice.
4. Most of the matters made in the applicant’s claim have necessarily been dealt with at considerable length in my main decision, as they all related to the principal planning issues in the appeal. I address them here in turn in the more limited context of this costs claim.
5. The Council refused planning permission on 17 January 2019 for a scheme described as the “construction of a three storey building incorporating balconies, on land to the rear of No 122 New Cross Road, SE14, to provide 3 one bedroom, 5 two bedroom and 1 three bedroom self-contained flats, together with associated landscaping and alterations to the front and rear of the existing building fronting New Cross Road, with the provision of refuse/recycle and bicycle stores at ground floor level” ¹. That decision notice did not refer either to flood risk or daylight, although these formed the basis of two of the reasons for refusal in this appeal.

¹ LPA Ref: DC/17/103612

6. The development plan had changed between the Council's 2019 decision and that for the appeal scheme, with the adoption of a new London Plan in 2021. National planning policy, as set out in the National Planning Policy Framework, was amended in the intervening period, and the PPG updated in respect of flood risk. New or updated advice and guidance on relevant housing standards – notably London Planning Guidance, and the BRE's *Site Layout Planning for Daylight and Sunlight* – also came out in that time. While consistency with earlier decisions is important, a decision maker is entitled (indeed, required) to assess proposals in the light of current policy and guidance and reach a conclusion – even a different conclusion for an apparently similar previous proposal, if that is necessary – which accords with that policy and guidance.
7. The applicant considers that, although an Inspector dismissed an appeal in 2017², in doing so they made it “very clear that [they] would have decided differently had it been certain, as it now is, that the extant scheme, that consented in 2010, had been lawfully established”. The 2010 planning permission³ was confirmed as having been implemented by an appeal decision in 2022⁴, and the implications of that as a possible fallback position are discussed at length in my main decision. However, it is not clear that the Inspector in 2017 would have reached a different conclusion. What they said (in the context of not being able to assume or find that the 2010 permission was extant, and therefore not being able to treat it as a prospective fallback position) was that, had they been able to do otherwise they “would have considered the scheme accordingly”.
8. I do not infer from those words that the Inspector in 2017 would necessarily have allowed the appeal. To my mind, it means that the Inspector would have gone on to carry out a full assessment of the weight to be given to any fallback position, as I have done in my main decision in the light of the 2022 appeal decision. While I did not agree with every element of the Council's case in respect of fallback, overall I found that the weight to be given to the fallback position did not justify allowing the appeal.
9. The differences between the adjacent Besson Street development in respect of noise and flood risk are dealt with in my main decision, as is the presence of existing flats and their implications in respect of the agent of change principle.
10. Finally, the pre-application response identifies at paragraph 9 that the site is within Flood Risk Zone 2, and recommended at paragraph 46 that an updated daylight and sunlight study should be prepared in view of the passage of time since the 2010 permission had been granted, and the update to BRE guidelines I have referred to above. While the principle of redeveloping the site was supported, this does not remove or reduce the responsibility on the applicant to ensure that relevant matters, including here flood risk and daylight, are assessed properly.
11. For the reasons set out at greater length in my main decision, I consider that the Council's decision to refuse planning permission was well founded. None of the points put forward to the appellant here is, to my mind, demonstrative of unreasonable behaviour on the part of the Council.

² PINS Ref: APP/C5690/W/16/3162045

³ LPA Ref: DC/10/073432

⁴ PINS Ref: APP/C5690/X/18/3204924

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and an award of costs is not warranted.

M Cryan

Inspector