



Costs Decisions

Hearing held on 25 November 2025

Site visit made on 25 November 2025

by A A Phillips BA (Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 26 January 2026

Costs application A: APP/L5810/X/25/3370284 and APP/L5810/X/25/3367200 48 Berwyn Road, Richmond Upon Thames TW10 5BS

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by BHPD Limited for a full award of costs against London Borough of Richmond Upon Thames.
- The appeals were against:
 - i. The refusal of a certificate of lawful use or development (LDC) for what is described on the Council's decision notice as confirmation that planning permission 24/0851/HOT as amended by PA25/1543 and 24/0852/HOT as amended by PA25/1532, can lawfully be constructed concurrently. In addition, the erection of an outbuilding incidental to the main dwellinghouse; and
 - ii. The refusal of a certificate of lawful use or development (LDC) for erection of an outbuilding in the rear garden and confirmation that planning permission 24/0851/HOT (as amended under 24/0851/NMA) and 24/0852/HOT (as amended by PA25/0224) can be lawfully constructed concurrently.

Costs application B: APP/L5810/X/25/3370284 48 Berwyn Road, Richmond Upon Thames TW10 5BS

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by London Borough of Richmond Upon Thames for a partial award of costs against BHPD Limited.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for what is described on the Council's decision notice as confirmation that planning permission 24/0851/HOT as amended by PA25/1543 and 24/0852/HOT as amended by PA25/1532, can lawfully be constructed concurrently. In addition, the erection of an outbuilding incidental to the main dwellinghouse.
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Decisions

Application A

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

Application B

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

Reasons

3. 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.

4. “Unreasonable” is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of “Wednesbury” unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

Application A

5. In summary, the appellant has made the application for costs on the basis that the local planning authority has behaved unreasonably for several reasons. These may be categorised as follows:
- i. The Council did not assess the matters before them with an open mind;
 - ii. Their assessment of the proposed outbuilding is flawed with respect to what is being proposed, the interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the context in which the applications were made;
 - iii. Inconsistent claims with respect to the concurrent implementation of the planning permissions;
 - iv. No site visit undertaken by the planning case officer;
 - v. Inflexibility, including not being pro-development; and
 - vi. Inconsistent positions being adopted throughout the process with reference to non-material amendments.
6. I have also noted that the appellant is using the costs application to reiterate their arguments against the Council’s reasons for refusal with respect to both appeals. That is not the purpose of the costs regime and when submitted such comments will not be taken into account when deciding whether unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has occurred.
7. In determining the applications, the Council has made assessments and decisions based on their interpretation of legislation, guidance and case law. Their assessment is based on the evidence submitted by the appellant and the burden of proof is on the appellant. The case officer’s assessment of the applications is clearly set out in the Officer Reports, Statements of Case and their Final Comments. It is clear to me that their assessments have been carried out in accordance with the Act, taking account of relevant case law, understanding the proposals before them. There is also evidence that assessments have been the subject of internal reviews and confirmation from the Council’s legal services team who supported the Council’s case at the Hearing.
8. In addition, the Council’s reasons for refusal are clearly justified in the assessments submitted and articulated in the decision notices issued. Therefore, I do not accept that the Council has behaved unreasonably by failing to have an open mind or by failing to satisfactorily substantiate their reasons for refusal. Although I have found in favour of the appellant with respect to the erection of an outbuilding in the rear

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

garden under Appeal APP/L5810/X/25/3367200, that does not mean the Council has behaved unreasonably.

9. Secondly, with respect to the proposed outbuilding the appellant argues that the Council exaggerated the size and significance of the proposal that permitted development rights have been wrongly interpreted, the Council has misunderstood what a summerhouse is and failed to understand the wider context for the proposed outbuilding.
10. The Council's first reason for refusing the outbuilding does not relate to it being a standalone dwellinghouse, but because the appellant themselves described the building as being "ancillary" rather than "incidental to the enjoyment of the dwellinghouse" as is permitted development which is quite a different thing. The appellant has acknowledged this error in the first application and rectified it in submitting their second.
11. With respect to appeal reference APP/L5810/X/25/3367200 I do not arrive at the same conclusions as the Council with regard to the proposed outbuilding. However, that is a matter of judgement based on the evidence before me rather than resulting from unreasonable behaviour on the Council's part. In my judgement the accommodation to be provided aligns with the use as a summer house intended for purposes incidental to the enjoyment of the host dwellinghouse rather than it being a separate unit of residential accommodation.
12. I see little evidence that the Council is making judgement calls on lifestyle rather than the proposals in the light of the GPDO. In any case, appeals such as this fall on whether a building is required for a purpose incidental to the enjoyment of the dwellinghouse. The outcome depends very much on the specific details submitted with each application. Each case should be determined on its own merits, and I have no doubt that this is the approach taken by the Council, notwithstanding my different conclusion.
13. The Council has not based their decisions on what people should or should not have built. They are based on the specific facts of each case, their interpretation of the provisions of the GPDO and relevant guidance. I understand that residents of high quality residential areas may wish to have additional leisure spaces within the grounds of their main residence but that is not a factor relevant to the determination of these LDCs. Instead, the determination should be based on the evidence submitted in support of what is being proposed and a reasonable interpretation of permitted development rights. There is insufficient evidence before me that the Council has done otherwise.
14. Thirdly the appellant claims that there are conflicting claims made on the applications the subject of these appeals. In their written submissions and at the Hearing the Council set out their concerns about the conflict between the developments the appellant wishes to carry out concurrently. This was done by explaining their interpretation of the plans and concerns in the light of case law in a clear and meaningful way and by reading written submissions and by responding to the appellant's oral evidence at the Hearing. As I have set out in the main decisions, concurrent development as a single operation in these cases would be unlawful.
15. The appellant argues that the absence of a site inspection meant that there were factual misunderstandings by the case officer in dealing with the applications,

increasing the burden of proof on the appellant. There is no statutory requirement for a site visit to be carried out as part of an application process. Indeed, in this case it is clear to me that the Council had sufficient evidence to determine the applications. In any case, the burden of proof is on the appellant, and it is for them to submit all evidence needed to determine the LDC submitted. The Council determined that in this case that a visit was not necessary. There is insufficient evidence that their decision not to visit the site constitutes unreasonable behaviour nor is there evidence that a site visit would have led to different decisions being made.

16. The presumption in favour of sustainable development is not a relevant consideration in the legal determination of a LDC. Similarly, it is not for a local planning authority to demonstrate being pro-development or otherwise in such a legal determination. Although I have found against the Council on the matter of one of the outbuilding proposals, the Council has shown through the appeal process that their behaviour has not been unduly restrictive and inflexible on these developments. Therefore, the appellant's suggestion that there has been procedural unfairness or impropriety, including negligence in not changing the case officer, is not well-founded.

Application B

17. The Council's case is that the appellant has behaved unreasonably with respect to:
- i. The original LDC application being based on a specific set of plans and drawings;
 - ii. The appellant introduced an entirely new and materially different set of plans which were not part of their original application determined by the Council; and
 - iii. The approach taken by the appellant is contrary to Procedural Guidance.
18. According to s192 of the Act, the key question with reference to revised plans is whether the proposed operation would be lawful if instituted or begun on that date i.e. the date the LDC is determined. Therefore, there is scope for a change of plans to be submitted at appeal. In dealing with an LDC appeal S195 refers to the 'refusal' being well-founded – meaning the Council's decision, not the reasons for the decision. Moreover, the application being appealed is made to ascertain what is or would be lawful.
19. This is a different approach to dealing with an appeal under s78 of the Act where the appeal process should not be used to evolve a scheme. I have taken account of the Council's comments relating to guidance and procedural fairness and I understand their frustrations in dealing with this longstanding case, including numerous applications and appeals. However, the submission of the plans through the appeal process is not unlawful nor unreasonable behaviour in these circumstances.
20. Additionally, the courts have held² that the Secretary of State cannot be compelled to issue a certificate when they are of the opinion that one should not be granted. An Inspector should consider any relevant fresh evidence advanced at appeal, including where this evidence was not advanced at application stage. The purpose

² Cottrell v SSE & Tonbridge and Malling BC [1982] JPL 443

of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.

21. Consequently, I do not find that the appellant has acted unreasonably in the appeal process.

Conclusions

Application A

22. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Application B

23. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

A A Phillips

INSPECTOR