Planning Inspectorate

Costs Decision

Hearing held on 20 January 2026

Site visit made on 20 January 2026

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 18th February 2026

Costs application in relation to Appeal Ref: APP/A5270/W/25/3374614
10 Spring Bridge Mews, Ealing, London W5 2AB

- 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 A Francis for a partial award of costs against the Council of the London Borough of Ealing.
- The appeal was against the refusal of planning permission for demolition of existing studio offices and construction of new four storey office building with cycle store and photovoltaic panels.

Decision

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

Submission for applicant - Mr A Francis

2. The costs application was submitted in writing shortly before the Hearing. The applicant advances two grounds for costs. The first is that there was no lawful or policy basis for the Council to require an affordable workspace contribution, resulting in wasted expense in requiring legal advice and input in the preparation of what are said to be unnecessary planning obligations and for associated legal input and representation at the Hearing. The second claim is that the Council's late change in position regarding the submitted obligation required urgent legal review and a substantive response, giving rise to avoidable additional costs that would not have been incurred had the Council set out its concerns in a timely manner.

Response by respondent - the Council of the London Borough of Ealing

3. The Council disputed the cost claims orally at the Hearing but due to the late issue and extent of the applicant's cost application, the Council was also afforded the opportunity to provide a written response. The applicant was given the opportunity to provide comments in response.

Reasons

4. 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.

5. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal.

6. It is evident from both the costs application and the Council's written response that the parties hold fundamentally opposing views on whether an off-site affordable workspace contribution is lawful or supported by policy. Each party has provided substantive evidence in support of its position. In these circumstances, it is clear that meaningful engagement, including detailed discussion and consultation, would have been required to explore the basis for the contribution and to seek to resolve the matter through the normal progression of the appeal process.

7. The Council's expectation for an off-site affordable workspace contribution (contribution) was made explicit at the application stage. The Delegated Decision Report of 15 July 2025 confirmed that, had permission been granted, the Council would have sought such a contribution, referring to Policies E1 and E3 of the London Plan 2021 (London Plan) and emerging Policy E3 of the Ealing Draft Local Plan (Regulation 22) (Draft Local Plan). However, despite identifying the matter in its officer assessment, the Council did not cite the absence of a contribution as a reason for refusal in its Decision Notice of the same date.

8. In the applicant's appeal statement (MSC Planning Associates Ref: 25-055), the applicant acknowledged the Council's expectation for a contribution. The applicant further proposed the use of a planning condition to secure such a contribution, should the Inspector consider it to meet the tests in CIL Regulation 122. A unilateral undertaking (UU) dated 14 October 2025 was also submitted in support of this position. The applicant did not present substantive evidence to dispute the necessity or reason for the contribution or the preparation or submission of the UU.

9. On 25 and 27 November, I sought clarification from the Council regarding the justification for the contribution and confirmation of its necessity and reasonableness. In its response of 27 November, the Council outlined the status of the Draft Local Plan and Policy E3 and explained the basis for the contribution with reference to its Affordable Workspace Study. The Council reiterated its view that the obligation was necessary and reasonable in light of the requirements of both the London Plan and the Draft Local Plan. In response, the applicant noted the information provided but did not dispute the basis for the contribution or the need to prepare or submit the UU.

10. On 4 December, I advised that, if an obligation was required, it would need to be in place prior to the determination of the appeal and that a planning condition would not be an appropriate mechanism. I also observed that, as Policy E3 of the Draft Local Plan remained open to change, there was some uncertainty as to whether the contribution would meet the tests in CIL Regulation 122, and that this would be discussed at the Hearing. While the applicant noted that Counsel's advice was being sought on the points, no concerns regarding the contribution or UU were raised at this point. On the 9 December, the applicant provided a further response, but this only related to the need for additional UUs for the alternative designs that were being considered at that time.

11. The Council reiterated the need for the planning obligation and the calculation for it in its appeal statement dated 10 December.

12. On 18 December, while the applicant made reference to the ongoing debate regarding the contribution's role within the adopted policy framework, no specific details of dispute were raised, and it was indicated that a revised UU was being prepared. On 23 December, although there remained some disagreement over the

appropriate method for calculating market rent, the Council confirmed its agreement to the contribution figure derived by the applicant.

13. A Statement of Common Ground (Ref: v1.6) (SoCG) was issued on 23 December. This recorded agreement that the draft UU would secure the policy requirements for affordable commercial units as set out in the London Plan and emerging Policy E3 of the Draft Local Plan, including agreement on the contribution figure. The Points of Disagreement section did not identify any dispute between the parties regarding the necessity or justification for the contribution.

14. An amended signed and dated UU (comprising the original UU of 14 October 2025 with a supplementary UU dated 31 December 2025) was submitted on 12 January 2026. However, this version was incomplete due to missing pages. The Council provided comments on 16 January and in this, it did not indicate the amended UU was unacceptable but noted that it was incomplete and identified a number of clauses and provisions that it typically would require to be included in a planning obligation.

15. Complete UUs were submitted on 19 January, accompanied by the applicant's costs application. In this the legality and necessity of the contribution were disputed and fully detailed for the first time.

16. At the Hearing on 20 January, during the discussion of the planning obligation, the Council confirmed that the clauses and provisions it had previously highlighted were not essential to the acceptability of the UUs. At this stage, the applicant also reiterated its position disputing both the legality and the necessity of the contribution, a stance with which the Council expressly disagreed.

17. In relation to the first cost claim, taking the above together, the evidence shows that the Council did not refuse the application on the basis of the absence of an affordable workspace contribution. Although a CIL Regulation 122 compliance statement was not provided, the Council nonetheless set out a clear and consistent rationale for requiring the contribution at the application stage and throughout the appeal. Until 19 January, immediately before the Hearing, the applicant did not submit any substantive challenge to the policy or evidential basis for the contribution, nor was any concern about the need to prepare and submit a planning obligation to secure it raised.

18. Given the fundamentally opposing views of the parties on whether the contribution was lawful or supported by policy, detailed discussions on this matter were inevitable. Had the applicant raised its dispute at an earlier stage, there would have been a reasonable opportunity for the parties to explore and potentially resolve the issue before the Hearing. Instead, the applicant introduced its challenge to the legality of the contribution at a very late stage, by which time legal input and work on the obligations had already been completed, and the applicant considered legal representation at the Hearing was necessary. These aspects were therefore outside the direct control of the Council.

19. The UUs underwent several iterations before the final, complete versions were submitted on 19 January, following the issue of an incomplete version on 12 January. Throughout this period, the Council responded to the points raised within reasonable timescales. The Council's response of 16 January to the amended UUs was proportionate in the context of obtaining legal advice and

reviewing a planning obligation. The Council did not depart from the position recorded in the SoCG, as it did not reject the amended UU but identified matters it considered appropriate for discussion at the Hearing. Given that the Council had not seen the amended UUs when agreeing the SoCG, it was reasonable for it to require time to review and comment on it. It was also reasonable, and consistent with avoiding unnecessary or abortive legal work, for the Council to reserve detailed observations until a complete and updated version of the UUs had been provided. The original UU submitted with the appellant's statement relied on securing the contribution by condition, a mechanism identified as unlikely to be acceptable, and it was therefore not unreasonable for the Council not to consider it in detail at that stage. As the finalised UUs were submitted very close to the Hearing, through no fault of the Council, the timing inevitably required late and rapid input. If the finalised UUs had been provided earlier, then there would have been a reasonable opportunity for the parties to resolve it without this.

20. I note that the applicant also submitted correspondence between its solicitor and the Council dated 15 and 16 January in support of the costs application. This related to the Council's request for legal costs associated with reviewing the UUs and to queries regarding land title information. While I note the concern raised regarding the Council's legal costs, the correspondence shows that discussions between the main parties at a late stage were still being completed. It also shows the Council were still providing comments regarding the UUs even though they were requesting legal costs. The correspondence therefore does not alter my findings detailed above.

Conclusion

21. For the reasons set out above, it has not been demonstrated that the Council's actions, in relation to either element of the costs application, amount to unreasonable behaviour as defined in the PPG or that they directly caused the applicant to incur unnecessary or wasted expense in the appeal process. Accordingly, an award of costs is not justified.

J Symmons

INSPECTOR