



Costs Decision

Hearing held and site visit made on 17 February 2026

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 MARCH 2026

Costs application in relation to Appeal Ref: APP/N5090/C/25/3374777

Land at 266 - 268 West Hendon Broadway, London NW9 6AG

- 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 Ms Mariana Rusu (WH Broadway Ltd) for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a building for use as three units of temporary sleeping accommodation on upper floors and commercial unit on ground floor.
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Decision

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

The submissions for Ms Mariana Rusu (WH Broadway Ltd)

2. The costs application was submitted in writing at the hearing and is requesting a full award for costs. The applicant has indicated that by issuing and refusing to withdraw an invalid enforcement notice (Notice), the Council's behaviour is regarded as unreasonable and has led to unnecessary expenses at appeal for the applicant. The main points raised are summarised below: -
 - The applicant outlines that the Council was unaware that the original building had been demolished and reconstructed until it was informed, which undermines the fact that action was pursued due to the impact on the character and appearance of the area. The appellant also considers that the requirement in the Notice to demolish the building is inherently unreasonable.
 - The Council relied on incorrect information from a neighbour, as well as online resources, to determine the building's use, and failed to undertake a site visit or serve a Planning Contravention Notice (PCN) to clarify the situation. The Council also continued the appeal process despite accepting that the allegations in the Notice regarding the building's use were inaccurate and needed correction.
 - The applicant contends that the Council's rationale for issuing the Notice regarding 'optimisation' is unfounded, as it stems from the incorrect allegation concerning three units of temporary sleeping accommodation. Furthermore, it is asserted that the Council neglected to consider a relevant policy from the London Plan 2021 that supports visitor accommodation. Additionally, the applicant claims that the Council has erroneously stated that the alleged development has led to a loss of housing stock in the area, contrary to a cited policy in the Barnet Local Plan 2025.¹

¹ Policy E10 of the London Plan and Policy HOU05 of the Barnet Local Plan

The response by the Council of the London Borough of Barnet

3. The response was made in writing by the Council. The Council refutes the claims that its behaviour was unreasonable and resulted in unnecessary expense for the applicant in the appeal process. The Council's main points are summarised below: -
- The Council did have concerns over the external detailing when serving the initial breach of condition notice but was unaware the previous building had been demolished. Upon discovering that the building had been demolished, the Council corrected the error by withdrawing and reissuing a corrected notice. The Council maintain that to demolish the unauthorised building is a reasonable requirement to remedy the breach rather than seeking an alternative that addresses the harm.
 - The Council state that issuing a PCN was unnecessary since there was no dispute that the breach, the erection of a building, had occurred. Due to inadequate communication from the appellant, the Council also believed it was unlikely they would have received clarifying responses on the use via a PCN. They maintain the description of the breach was satisfactory but were happy to concede to the use being described as an 'Apart Hotel'. The alternative description was agreed swiftly and there was no delay in the appeal process.
 - The Council believe that withdrawing and re-issuing the Notice after agreeing the correction could have been considered unreasonable. To support this position, the Council has cited legal judgements where it was indicated that breaches should not be allowed to persist due to pettifogging matters of no real significance.²
 - The Council clarify that their reference to optimisation was with regard to the temporary nature of the residential accommodation. The Council indicates it reassessed the case upon realising the alleged use was incorrect, but the reasons remained valid. There is no obligation to reference all relevant policies in the Officer Delegated Report and those policies seeking to protect the loss of residential units were relevant due to the demolishing of the previous building.
 - The Council opted to proceed with the appeal process as it offered the smoothest and most pragmatic solution to the matter in hand.

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. The PPG advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate³.

² R v Kuxhaus (1988) 2 PLR 5, R v Tower Hamlets LBC ex p P F Ahern (London) Ltd [1989] JPL 757, Jarman v Secretary Of State For Environment & Anor [2000] EWCA Civ 126 (12 April 2000) and especially Eldon Garages Ltd v Kingston-upon Hull County Borough Council [1974].

³ Paragraph: 048 Reference ID: 16-048-20140306 (Revision date: 06 03 2014)

6. The applicant's contention that the initial breach of condition notice was issued in error is irrelevant to the determination of whether the applicant suffered unnecessary or wasted costs in the context of the appeal against the subsequently served Notice. The assertion that the requirements are inherently unreasonable, or excessive to remedy the breach are normally matters that would be relevant in a ground (f) appeal. Nonetheless, although I did not consider the ground (f) in the accompanying decision, where there is no obvious alternative, it would not be inherently unreasonable for the Council to require an unauthorised building to be removed to remedy the breach.
7. The Council has suggested that the applicant was unresponsive to communications before the issuing of the Notice. While this might be the case, there is a lack of substantive evidence, such as documented letters, emails, or records of site visits, that illustrate the Council's efforts to engage with the applicant or their agents to adequately investigate the breach of planning control. This absence of evidence does demonstrate a lack of thoroughness by the Council when undertaking the investigation. Furthermore, although the Council believes the chances of the applicant responding to the PCN were unlikely, its failure to issue a PCN or gain access before taking formal action were significant factors that contributed to the inaccuracy of the Notice.
8. The Council expressed a willingness to engage with the appellant to rectify the allegation, however, as set out in the accompanying appeal decision, the discrepancies between the alleged and actual use were not minor corrections. Rather, they represented significant changes to the nature and scale of the alleged development, which could not be corrected without causing injustice. This distinguishes this case from those legal judgements cited by the Council, which is concerned with cases where breaches are allowed to persist due to minor issues with a Notices that lacked significant consequences if corrected or varied.
9. The Council's view on the appellant's actions to demolish the building, which resulted in the loss of residential units is noted. However, if the demolition of the previous building and the resulting loss of permanent residential units were central to the alleged unauthorised development and the reasons for issuing the Notice, it should have been included in the allegation. As the allegation does not include the demolition or the loss of permanent residential units, the cited policies aimed at protecting housing stock in the area are not applicable to the alleged unauthorised development.
10. It is accepted that there were challenges with accessing the site and communicating with the applicant. However, for the Council to issue the Notice without thoroughly exploring all areas of investigation to clarify the building's use is unreasonable behaviour. While Inspectors can correct Notices, to do so in this case would have led to injustices and procedural unfairness, as outlined in the accompanying appeal. Therefore, after acknowledging the inaccuracies in the Notice, the Council's decision to continue the appeal as an effective resolution was misguided. Ultimately, the decision resulted in unnecessary expenses and wasted costs for the applicant during the appeal process.
11. Therefore, in my judgement, a more diligent investigation would have either avoided the need to serve the notice in the first place or ensured that at the very least it was accurate. In addition, a more considered approach to the significant issues with correcting the allegation could have prevented the appellant from incurring further unnecessary costs and wasted expense in the appeal process.

Conclusion

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has occurred, and a full award of costs is therefore warranted.

Costs Order

13. 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 the Council of the London Borough of Barnet shall pay to Ms Mariana Rusu (WH Broadway Ltd), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed by the parties.
14. The applicant is now invited to submit to the Council of the London Borough of Barnet, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

M. P. Howell

INSPECTOR