



---

## Costs Decisions

Site visit made on 13 March 2026

**by Jean Russell MA FRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2026

---

### **Costs application in relation to Appeal A: APP/N5090/X/24/3354231**

#### **22 The Spinney, Hendon Wood Lane, Barnet Gate, Barnet. London, NW7 4HR**

- Costs application A is made by Mr Sean Ruddy o/b Erris Plant Hire Limited under sections 195 and 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, for a full award of costs against the Council of the London Borough of Barnet.
  - Appeal A was made against the refusal of the Council to issue a certificate of lawful use or development for “use of the land for the purposes of open storage of and the building located thereon for the purposes of covered storage”.
- 

### **Costs application in relation to Appeal B: APP/N5090/C/24/3354904**

#### **Land in the South-West Corner of The Spinney, 22 Hendon Wood Lane, London, NW7 4HR**

- Costs application B is made by Mr GMP Fitzgerald under s174 and s322 and Schedule 6 of the Town and Country Planning Act 1990 and s250(5) of the Local Government Act 1972 for a full award of costs against the Council of the London Borough of Barnet.
  - Appeal B was made against an enforcement notice alleging: “...the material change of use of land...to a storage yard and the erection of a canopy structure...and the permanent stationing of a metal storage container...incidental to the making of the change of use”.
- 

## **FORMAL DECISIONS**

1. The application for an award of costs pursuant to Appeal A (ref: APP/N5090/X/24/3354231) is refused.
2. The application for an award of costs pursuant to Appeal B (ref: APP/N5090/C/24/3354904) is refused.

## **PRELIMINARY MATTERS**

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. PPG paragraphs 16-047-20140306 and 16-049-20140306 give examples of unreasonable behaviour in respect of procedural or substantive matters at appeal that may result in an award of costs against a local planning authority.
5. The costs application made by Appellant B mirrors that made by Appellant A but also raises additional issues specific to the enforcement proceedings. The Council submitted a combined response and the appellants made joint final comments. I shall therefore structure this decision letter by considering the combined and then additional enforcement issues.

## REASONS

### The Council's approach to Lawfulness: Appeals A and B

6. Both appellants seek an award of costs on the basis that, when refusing to grant a lawful development certificate (LDC) and “rushing to enforcement”, the Council “failed to engage with overwhelming evidence, misapplied clear legal principles and disregarded procedural obligations”.
7. In my appeal decisions, I attached significant weight to the statutory declarations submitted in support of Appeal A but found that they were not sufficiently precise and unambiguous, in the light of all other evidence before me, to show that the material change of use of Yard no. 2 to a storage use or the erection of the timber building were immune from enforcement action on the balance of probabilities.
8. The onus was on the appellants to make their case for lawfulness. The Council was not obliged to produce evidence but, nonetheless, they did submit photographs, particularly an aerial photograph from March 2016, which rendered the appellants’ version of events in respect of the storage use less than probable. I am satisfied that the Council did not overlook the appellants’ or their own evidence. They did not fail to apply the balance of probabilities test or to substantiate their reasons for refusing to grant an LDC and for issuing the notice.
9. I also consider that Council did not act contrary to or fail to follow well-established case law in relation to the canopy structure. The appellant’s own evidence was of the building being erected some years after the start of the storage use, and of the use still partly taking place in the open. I applied the Court of Appeal judgment in *Caldwell v Secretary of State for Levelling-up, Housing and Communities* [2024] EWCA Civ 467, and found that the building was probably ancillary to rather than causative of the material change of use.
10. It follows that enforcement action could be taken against the building, via the *Murfitt* principle, and an LDC could not be granted for it. If the Council had expressly considered making a split decision on the LDC application, they would not have done so. Appellant A did not incur wasted expense in appealing the Council’s refusal to grant an LDC and the same applies to Appellant B and their ground (d) appeal relating to the building.
11. I agree with the appellants that the Council behaved unreasonably in one respect relating to the immunity question: by submitting just one of four photographs taken by their officers on a site visit made on 17 November 2015. All photographs of Yard no. 2 taken on that visit were bound to be of interest. The Council concealed relevant evidence in conflict with PPG paragraph 16-047-20140306. The appellants should not have needed to make a Freedom of Information request in order to obtain those photographs.
12. However, the photographs did not show the “the timber building in situ” and that is not surprising since the appellants’ own case was that construction of the building began later. I also found that the photographs did not show such items on the land to make it probable that there had been a material change of use by November 2015. The photographs did not support the appellants’ version of events, and the Council’s failure to produce them did not result in an unnecessary appeal or other wasted expense for the appellants.

## Other Enforcement Issues: Appeal B

13. Appellant B claims that the Council behaved unreasonably by issuing an enforcement notice which was “always going to be quashed” because it was “void for uncertainty”, applying the principles set out in *Miller-Mead v Ministry of Housing, Communities and Local Government* [1963] 2 WLR 225.
14. I found the opposite in my appeal decisions. The description of the timber building as a “canopy structure” was accurate and moreover understood by Appellant B. The building may not be a “lightweight, open-sided domestic-scale structure”, as have been subject to other appeal decisions<sup>1</sup> but it still has the shelter form and the function of a canopy.
15. The Council provided sufficient information in the cover letter served with the notice to enable Appellant B to understand his rights and make the appeal that he made. The notice did not fail to comply with s172 or s173 of the Town and Country Planning Act 1990. It was not hopelessly ambiguous or uncertain. It was not null or invalid and the Council had no need to seek any variation of it.
16. I also found against Appellant B’s arguments that the metal container subject to the notice was permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). It follows that the Council did not behave unreasonably by including the metal container in the allegation and Appellant B did not incur unnecessary expense in making his ground (c) appeal.

## CONCLUSIONS

17. The “Brook Road appeal (ref: APP/T5150/X/23/3328438) concerned a different site and LDC application. It can have no bearings on my assessment of the appellants’ evidence or the Council’s behaviour in this case.
18. I also make no comment on whether the Council made “cursory” responses to the “extensive legal submissions” made by Appellant A “throughout the processing of the LDC application and subsequent appeal preparations”. Either way, my conclusions on these applications are the same.
19. I find that the Council, in refusing to grant an LDC and then issuing an enforcement notice, did not fail to produce evidence to substantiate their reason refusal or act contrary to well-established case law in conflict with PPG paragraph 16-049-20140306. They unreasonably concealed relevant evidence, in conflict with PPG paragraph 16-047-20140306 but, if they had not done so, the appellants would have still needed to appeal. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Both costs applications must be refused.

*Jean Russell*

INSPECTOR

---

<sup>1</sup> Appeal refs: APP/N5090/D/17/3188044 and APP/N5090/D/24/3350605