Planning Inspectorate

Costs Decision

Inquiry held on 10, 11, 12 February and 19, 20 May 2026

Site visit made on 10 February 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2026

**Costs Application in relation to Appeal Refs: APP/T5150/C/25/3374118/119 & 120
Buildings at Victoria Works, Edgware Road, Cricklewood, London NW2 6LF**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Council of the London Borough of Brent for a full award of costs against MStay Limited.
- The Inquiry was in connection with appeals against enforcement notices which alleged the erection of three buildings.

Decision

1. The application for an award of costs is partially allowed.

The submission for the Council

2. The Council seeks a full award of costs against the appellant for procedural and substantive unreasonable behaviour in bringing the ground (a), (d), (f) and (g) appeals and therefore the appeals overall.

3. In respect of the ground (d) appeal, the appellant provided evidence that Building B, and all windows in particular, were installed by 2020. That was retracted in oral evidence where the appellant's planning witness explained that six additional windows had been added to the western elevation in 2023. Moreover, the planning witness explained that the cladding to the western elevation occurred in 2025. The planning witness accepted in cross-examination those were both material operations comprising development within the meaning of s.55 Town and Country Planning Act 1990.

4. However, the appellant called no witness of fact, or provided any evidence whatsoever, to explain whether those operations were separate operations or part of the single building operation which comprised the erection of Building B. Without that evidence, the ground (d) appeals were bound to fail because material operations were undertaken after the relevant date (25 March 2021) which, in the absence of any evidence to the contrary, would be presumed to be part of the single operation to construct the building. It follows that, on the evidence before the inquiry, the only possible conclusion is that the building was not substantially complete until after 25 March 2021 and therefore not immune from planning control. It was unreasonable to advance the ground (d) appeal in those circumstances. It was also unreasonable for the planning witness to advance their professional opinion that Building B was immune without a rationally sufficient evidential basis.

5. The factual basis of the ground (d) case, including the status and timing of works, could and should have been agreed between the parties (e.g. the insertion of windows in 2023). The appellant refused to include this uncontroversial information in the SoCG, prolonging the Inquiry and causing the Council to call evidence on these matters.

6. In respect of the ground (a) appeals, the planning witness accepted that the scheme conflicted with the development plan in respect of living conditions, accessibility, sustainability and fire safety because there was no evidence before the inquiry to demonstrate those policies could be met. It was unreasonable to advance an appeal without evidence to demonstrate that the imposition of conditions would be capable of satisfactorily addressing those policies. The planning witness was unwilling to accept that her client had acted ‘unreasonably’ because the father of one of the directors was ‘unfamiliar with the planning system’ however, they did accept that, under the PPG, that conduct did nevertheless amount to ‘unreasonable behaviour’.

7. The planning witness’s answers in cross-examination were, with respect, also unreasonable. It was unreasonable for a chartered town planner, giving evidence to a planning inquiry, to advance an opinion on the basis of being a ‘lay person’. It was unreasonable to say, without reliable and supportable evidence, that the building could be made to comply with fire standards or that there would be a satisfactory living conditions for the occupiers. In any event, the appellant is a real estate corporation required to act within its articles of association. Its directors are legally obliged to conduct its affairs with reasonable care, skill and diligence. It is not credible to suggest that investment on this scale was made without some collective decision making, which accepted the risk to build without permission.

8. It was unreasonable, without reliable and supportable evidence, to suggest that various structural alterations could be made to render the building accessible. It was unreasonable to advance an opinion (both in cross-examination and in response to an answer elicited in re-examination) that, even without evidence, it was possible to say the noise, fire, accessibility and sustainability issues could be overcome without any expertise in those fields. The planning witness knew or certainly ought to have known that her answer that she thought the fire standards could be achieved because ‘in the building there are sprinklers, fire extinguishers and signage’ or that adequate living conditions could be achieved because ‘it was a quiet building’ were, with respect, fanciful and not a reasonable professional opinion for a chartered planner to express in evidence at a planning inquiry.

9. The planning witness’s explanation that the appellant wanted to ‘see how these appeals went before doing the work’ and, in particular, her decision to adopt that opinion as one she chose to advance to the Inspector as her honestly held professional opinion was wholly unreasonable. No reasonable chartered planner would have advanced a genuinely held professional opinion that, without reliable and supportable evidence, the Inspector could properly conclude the relevant policies of the development plan were met. The Inspector identified sustainability, noise, accessibility and fire safety as main issues and the appellant acknowledged conflict. Instead of evidencing these issues, the appellant submitted fee proposals (JD Appendix 7 and 8). The planning witness admitted in XX the appellant was reluctant to resource that work but clearly was aware of the need for that evidence. The unreasonable nature of that position was revealed when the appellant then

sought an adjournment to address those matters. It was claimed it only dawned on the appellant that such material was necessary during cross-examination however, that is not a sensible position to take and indeed contradictory to the answers the planning witness gave in cross-examination (where she explained she had advised her client this material was necessary).

10. Notwithstanding the Inspector's indulgence to the appellant to allow a three month adjournment to address those matters, it still has failed to address them. The noise, fire and sustainability reports all confirm further investigation and remedial work is required to make the buildings acceptable:

    a. On noise, there is the investigation required to understand whether the rooms will have adequate background ventilation without the need to open the windows.

    b. On sustainability, there is the location and form of energy saving measures to be undertaken.

    c. On fire, there is much to do, including accommodating an entirely new staircase. Moreover, the appellant's fire consultant accepted that QDR process would need to be undertaken to know whether the retrofits could be delivered and said the only reason it was not undertaken was that it was that he had not been instructed.

11. The appellant compounded its unreasonable behaviour by presenting unreliable evidence including:

    • A sustainability report, based on retrofit, failing to address deemed applications for the erection of new buildings. That report is based on assumed rather than actual construction methodology and materials, and the wrong baseline (i.e. not using Building Regulations). The appellant has produced no evidence to suggest the unauthorised developments meet sustainability standards.

    • A noise report based on calculated internal noise levels, instead of robust internal measurement (RP 4.4), compounded by the erroneous exclusion of trickle vents from those calculations (RP 4.5) and assumed materials and ventilation performance in the absence of construction details from the appellant (RP4.4).

    • A fire report identifying serious deficiencies without detailing solutions (PVZ1.13).

    • Inaccurate or inadequate plans (NW 3.7 and Appx 16).

    • A PCN response identifying Unit C as a storage building, which is materially different with its present case and the agreed facts (NW Appx 6).

12. The resolution of those matters could itself give rise to further planning issues (e.g. the noise and visual effects associated with energy saving measures), yet no evidence was provided to the inquiry. It was not lawfully open to the Inspector to leave such wide-ranging matters to resolution through the conditions because it was impossible to tell whether the scope of the works would take the permission beyond that which could be permitted under s.177 of the 1990 Act. It was accordingly, unreasonable to continue to submit the appeal without that material.

13. The appellant's case was unreasonable to bring the ground (a) appeal because it was unsupported by evidence on critical technical issues, which was essential prior to the grant of planning permission. When the technical evidence was provided, it confirmed the need for further remedial work, the detail of which was entirely

absent. The appellant's professional witness also acted unreasonably in choosing to adopt and advance that unreasonable opinion as her own professional judgment. The appellant has withheld information on form, construction and materials that would have facilitated assessment and shortened the inquiry.

14. The appellant's ground (f) case failed to explain why the steps exceeded what was necessary to remedy the breach of planning control. The appellant did not say that the Notices were directed at remedying injury to amenity. The sole question therefore was whether the steps exceeded what was necessary to remedy the breach of planning control. The appellant's case and the planning witness's opinion in adopting it was unreasonable.

15. The appellant's ground (g) case was also unreasonable. It was unreasonable to seek to extend the period to comply with the Notice, to an unprecedented two and a half years, for 'discussions and negotiation with the Council to agree suitable use and physical works to the buildings'. The purpose of ground (g) is that the period to comply with the steps falls short of what should reasonably be allowed. The appellant advanced no evidence that it would be unable to reasonably comply with the steps in the Notice within 12 months. That was unreasonable behaviour.

16. Overall, the above unreasonable behaviour incurred by the Council was the wasted expense of responding to the appeals altogether. Had the appellant not had a ground (a), (d), (f) or (g) there would have been no appeal. The Council would then have avoided the wasted expense of instructing counsel and an external consultant, in addition to the significant diversion of officer time to respond to hopeless appeals. Whilst the planning witness disavowed that the true motivation of the appeal was simply to prevent the Notices from coming into effect and thereby gaining more trading months before inevitably having to comply with the Notices, that must surely be their true intention. No reasonable person (with the benefit of advice from specialist counsel and a solicitor and a chartered planner) could have failed to appreciate the appeals stood no reasonable prospect of success.

17. The appellant's conduct in this appeal is to be discouraged. It undermines public confidence in the system. The costs regime exists to sanction such behaviour so as to act as a deterrent in future cases. For those reasons, the Council respectfully invites the Inspector to award the Council its full costs of defending the appeals.

The response for the Appellant

18. The parties to an appeal should use the costs regime responsibly. That has not been done in this case. The Council's costs case is entirely without merit and the application should never have been made.

19. This response should be read alongside the appellant's closing submissions.

20. Before turning to the points made in the application, the Council would do well to reflect on their very late engagement (at SOCG stage) with the ground b appeals, which they effectively conceded, with their position in respect of Main Issue 1 which was wholly at odds with its own Masterplan even though the issue was drafted by the Inspector (and the Council did not object) to have particular regard to the Masterplan, with their lack of proper analysis in respect of Main Issue 2, and with their lack of engagement until the EiC of the Council's planning witness with the material considerations supporting the appeals.

21. In respect of ground (d), the appellant's planning witness was clear that in her judgment the addition of windows and cladding to the western elevation after March 2021 did not mean that the building was not substantially complete in March 2021. See appellant's Closings at paras 18, 22, and 28.

22. She based her judgment on photographic evidence and on the evidence of use from the General Manager. As to the latter, that evidence was compelling because it was underpinned by records from booking.com. That judgment was quite clearly not unreasonable. It was a clear position she took and was entitled to take, rooted in evidence. The Council's para 6 is not a fair point – see appellant's Closings at para 19.

23. In respect of ground (a) it is noted that the Council's application includes no reliance on Main Issues 1 or 2. The costs position in respect of Ground a is based entirely on the 'technical' issues.

24. Para. 7 of the CA (Costs Application) regarding balance does not fairly represent the planning witness's position. Whilst in her Proof she was equivocal about development plan conflict (although in her conclusion at 11.3.6 she concluded overall accordance), in EiC she modified her position (as had been signposted in the appellant's opening) in light of what she understood to be the progress that had been made on technical issues through the SoCG and draft conditions and was satisfied that each development was in accordance with the development plan. In any event conflict with the development plan is only half the story and she was clear in written and oral evidence about the strength of benefits and the alternative prospect if the ENs were upheld.

25. Pausing here, there is some tension in the SoCG between 7.23/7.25 and the Matters in Dispute. That confusion was evident in para.48 of the appellant's opening.

26. In oral Evidence the planning witness expressed professional judgment as a planner that the outstanding technical issues were capable of being addressed by conditions (and UU). The subsequent evidence has shown that judgement to be sound.

27. In any event, what matters now is to consider how the appellants case unfolded. After the adjournment, detailed technical reports were prepared and extensive engagement ensued with the Council and its consultants. The appellant's position on the capability of conditions and undertakings to address the issues is set out in the appellant's closings. Whether or not the Inspector accepts those positions, the positions are not 'unreasonable' (para.18c of the CA mis-records the fire consultant's position – who said a QDR process was a way forward not that it was 'necessary').

28. The Appellant's position in relation to the technical issues was plainly not unreasonable and relied on technical evidence in respect of each issue.

29. As to whether the appellant's position prior to the adjournment was unreasonable, the Inspector's ruling in granting the adjournment was clear that he accepted that on the 12th February during cross examination there had been articulation of the Council's position. This is not fairly reflected in para.17 of the CA which claims that it was not 'sensible' to treat the cross examination as having provided further articulation. Even if there was any suggestion that the Appellant's approach to the

technical issues before the adjournment was unreasonable, there were no wasted costs as result. Had the technical work and evidence been done in advance of the Inquiry, the Inquiry would still have sat for the same number of days. Approximately 30/40 minutes XX by AB on the issue on 12th February is de minimis and not realistically quantifiable.

30. Even if the appellant had not presented the further technical elements, and even if the appellant accepted that this meant the developments were not in accordance with the development plan overall, that would not have meant that the appeal/Inquiry would have been avoided, because the planning balance requires this to be weighed against material considerations. A central material consideration, that had not even been considered by the Council, was the fallback position of a vacant derelict site potentially for years if the ENs were upheld.

31. Para.22 of the CA is a totally unfounded allegation – the appellant's consultants have endeavoured to liaise extensively by the Council's consultants, not helped by the determination of Council officers to stand in between the consultants.

32. The appellant's ground (a) cases were not unreasonable.

33. Regarding ground (f), the appellant's position is set out in its closings. The Appellant's position is clearly not unreasonable. In any event, the ground (f) appeal was dealt with on the papers and occupied less than a page in consultant's proof for the Council. Even if, which is not accepted, the appellant's Ground (f) appeal was unreasonable, any wasted costs would be de minimis and not realistically quantifiable.

34. Regarding ground (g), the issue is whether the compliance period fall short of what should reasonably be allowed. The appellant's position in setting out a reasonable timeframe for a solution to be found was not unreasonable (especially so if there was no unacceptable harm to the character and appearance of the area). The Council's Ground (g) position is based on two untenable arguments: (1) that IUD is a relevant factor to be held against an appellant in a ground (g) appeal. (2) Per para.24 of the CA that the compliance period should relate only to the time needed to physically comply. Even if, which is not accepted, the appellant had behaved unreasonably, the ground (g) appeal (which was dealt with on the papers) occupied almost no Inquiry time and very little coverage in the Councils written evidence – de minimis and not realistically quantifiable

35. There is no merit in the CA. It should not have been made.

Inspector Reasons

36. 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.

37. The ground (d) appeal was made on the basis of substantial completion by 25 March 2021. There may or may not have been some confusion or misinterpretation of the written cases between the parties about when additional windows were added and if so, perhaps this could have been clarified sooner. In the event, this was clarified during the Inquiry. However, the appellant's case was that additional works after the relevant date amounted to separate building operations. Whilst I did

not accept this, it does not amount to unreasonable behaviour on the facts of the case.

38. The request for an adjournment was also made on the basis that an available remedy was through the costs regime. In my ruling I made it clear that consideration of a costs application may well ensue. This was also provided in writing to the parties. It should therefore come as little surprise that there will be success for the Council in this regard. This is because it should be evident to the appellant that requesting an adjournment, on what was scheduled to be the final day of the Inquiry, to commission and submit technical evidence opens the door for a successful costs application on the basis of unreasonable behaviour and wasted expense.

39. Irrespective of how the Council articulated its position during the Inquiry, and which was in any event not inconsistent with its written submissions, the appellant should have provided this evidence in accordance with the timetable that had been set and further agreed by the parties during the Case Management Conference if it wanted it to be considered without a risk of costs. It consequently led to the adjournment of the sitting Inquiry and wasted expense for the Council in protracting the Inquiry as well as in consideration of technical evidence that the appellant had originally decided not to provide.

40. It is therefore not a case of whether the technical issues could have been addressed by means of planning conditions or the existence of other material planning considerations. I am therefore not critical of the appellant’s witnesses. Rather, it is that the appellant decided to not advance evidence, changed their mind on the final day of the Inquiry, and which resulted in a substantial bundle of new evidence to the Inquiry - and which also serves to demonstrate how much evidence was originally absent. My consideration of that evidence is then not relevant to my assessment of this costs application, it is the manner in which it was placed before the Inquiry, which amounts to unreasonable behaviour, and its implications, which amounts to wasted expense incurred by the Council.

41. To that end, I do not accept that the Inquiry would have sat for 5 days had the evidence been placed originally before the Inquiry, as it was highly disruptive, and also meant that preparation for the event would have been different had it already existed. Wasted expense arises from preparing for an event based upon certain evidence, an adjournment for substantial new evidence and two further sitting days than had been scheduled.

42. The ground (f) and (g) appeals were then determined on the papers and so Inquiry time was not spent on these issues. They were in any event straightforward matters, which whilst unsuccessful, I do not find on balance were unreasonably made. There were also ground (b) appeals to which the parties agreed corrections to all three notices during the Statement of Common Ground process, meaning that appeals that reflected some success had been made.

43. The Order will thus only be made in respect of the additional costs incurred following the adjournment of the Inquiry on 12 February and its conclusion on 20 May 2026. It should therefore not duplicate costs that were or would have been incurred had the Inquiry concluded on day 3 as had been scheduled.

Conclusion

44. Accordingly, unreasonable behaviour resulting in unnecessary or wasted expense has partially occurred and so a partial award of costs is warranted.

Costs Order

45. 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 MStay Limited shall pay to the Council of the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision in respect of the additional costs incurred following the adjournment of the Inquiry on 12 February 2026 and its conclusion on 20 May 2026 only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

46. The Council is now invited to submit to MStay Limited to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul T Hocking

INSPECTOR