



Costs Decision

Site visit made on 18 August 2026

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 September 2026

Costs application in relation to Appeal Ref: APP/T5150/C/25/3377160

26 Sidmouth Road, London NW2 5HJ

- 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 Dr Ali Kazim Khamas Al-Rubie for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging, in summary, the erection of a dwellinghouse.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.
3. The main thrust of the claim is that the Council failed to thoroughly assess what has been built, the effects of the unauthorised development and, thereafter, whether the breach could have been remedied through lesser steps.
4. Following the grant of planning permission for a dwelling ("the Original Permission") development commenced at the site. There were investigations over potentially unauthorised work early in the construction process, but work then paused and no further action was taken at that time. When activity resumed, the Council were alerted to the potential construction of a lower basement storey. Although Council officers had some difficulties accessing the site, they established that this was the case and served a Planning Contravention Notice ("PCN") seeking to establish some facts. The appellant did not respond to the PCN.
5. Nevertheless, the unauthorised development was evident and the Council decided to serve the enforcement notice subject to this appeal ("the Notice"). Unlike the PCN, which had been focussed solely on the unauthorised lower basement, the Notice alleged the erection of a dwellinghouse. The evidence also indicates that the Council's officers thought that the building was higher than the Original Permission, due to its elevated upper floor level and basement that partly protruded from the ground.
6. While the assumptions about the overall height might be slightly misguided, it is sufficient for it to appear to the Council that a breach of planning control has occurred in order to justify the issue of an enforcement notice. I appreciate that if

the appellant had been given additional legal warnings, they might have sought more detailed professional advice, provided responses to the PCN, or full engagement. However, the Council cannot be criticised for not pursuing this, given the previous lack of response alongside reported difficulties obtaining access to the site.

7. Nor was it unreasonable for the Council to draft the Notice alleging the erection of a dwellinghouse. The overall form is akin to a dwellinghouse and the planning history provides a clear indication that the building being erected at the site was intended to be one. That the ground (b) appeal has succeeded on the basis that the building is not yet a dwellinghouse does not automatically make the Council's proposition unreasonable.
8. In serving the Notice, which requires removal of the entire building and infilling of the basement, the Council does not appear to have considered whether a less draconian course of action might be available. However, it is clear that it appeared to the Council that a wholly unauthorised development had been carried out without planning permission. The appellant has not discharged the burden of proof on ground (b) to demonstrate that instead, there may have been a breach of condition of an otherwise extant permission. Therefore, it is not unreasonable for the Council to have issued a Notice that seeks to remedy the breach of planning control.
9. The enforcement of planning control should be remedial rather than punitive. However, given that the Council believed that the breach of planning control has its origin at the very lowest point of the building, affecting the entire structure that sits above that, it is not unreasonable for the Notice to have required the removal of the building, even if reversion to the design of the Original Permission might have been an available alternative. In this regard, the Council's approach does not point to any inconsistency in decision making, or a failure to consider logical alternatives or fallback scenarios.
10. Nevertheless, as set out at the beginning of my Appeal Decision, there was a problem with the drafting of the Notice. It alleges the erection of a dwellinghouse, and the Council's main evidence and response to my questions during the appeal process, indicates that its position is that what has been built is materially different to the Original Permission. It is clear that the Council considers it to be a single development that has always differed from the Original Permission, not a deviation from previously approved plans.
11. However, having alleged that the development is a new, wholly unauthorised dwelling, it is confusing that the Notice also describes the unauthorised development as including an extension to the side. The reasons for issuing the Notice, also attribute particular planning harm to that extension. Importantly it is unclear what section this relates to especially as it refers to part of the building that is also part of the basement and has an accessible area on its roof that could be described as a raised platform. Both the basement and raised platforms are separate parts of the allegation.
12. The problem identifying what is meant by the extension is compounded by the reasons that allege harm arising from the extension due to a loss of privacy, but given that its internal height is well below any side boundaries, that cannot occur from within that part of the building. As noted in my Appeal Decision, the harm from

- this part of the structure comes from the ability to stand on its roof and use it as a raised platform, not from the so-called 'extension' itself.
13. While the appellant appears to have understood the part of the building that was being described as an extension, it was appropriate for them to undertake some analysis to secure and demonstrate their understanding. Such was a reasonable part of their case to ensure that, when I assessed the appeal, I was considering the same part of the structure. Had the Notice been more clearly drafted in the first instance, they would not have been put to the unnecessary and wasted expense involved in unpicking that. A partial award of costs is, therefore, justified in the time taken to deal with this defect in the Notice.
 14. The Council's site visits allowed it to collect sufficient evidence to identify that a breach of planning control had occurred. It has laid out clear reasons why what has been built at the site is not that granted by the Original Permission. However, much of the Council's case in defence of the appeal is based upon mere existence of a breach of planning control rather than an analysis of why that might have led to adverse effects. On that, the Council's evidence is weak.
 15. The planning history gives a clear indication that the Council has consistently deemed a second basement level to be unacceptable. What is less clear are the reasons for this. In refusing a previous application, it was stated that any technical construction concerns around the proximity to the highway could be overcome with conditions, with the only reason stemming from vague assertions of overdevelopment.
 16. It is fair to say that the Council's Supplementary Planning Document – Basement gives clear guidance that basement development should not normally exceed one storey. However, the Council appears to have taken this to mean that adverse effects will always arise beyond that.
 17. In this case, it is not clear how the deeper excavations have actually led to temporary or lasting effects on the locality. The Council's position, that it would result in an 'over intensification of the site', or over development of the plot, is not supported by any explanation of what that means, any analysis of how or why it would occur or what the effects would actually be. The Council's only meaningful defence of its approach through this Costs application focusses, once again, on identifying material differences to the Original Permission rather than showing where it has identified actual harm.
 18. It is alleged, and explained in the earlier refusal for a second basement storey, that the resulting form of development would be uncharacteristic of the area. It may be that such extensive subterranean development does not exist elsewhere in the locality. However, as the existence of the lower basement is imperceptible from outside the building, it is unclear how any harm could arise from this. It appears to me that adverse effects could only arise if the level of use were so intense that it were highly noticeable, but it has not been shown why that would occur, what the level of use might be, or why the anticipated 'intensity' would result in adverse effects. The failure to substantiate its case on this point amounts to unreasonable behaviour from the Council.
 19. In considering the ground (a) appeal, I did identify that harm could arise to the living conditions of neighbouring residents from the use of the terrace above the so-called 'extension'. As it was not unreasonable for the Notice to target the entire

development, the existence of this harm means that the pursuit of enforcement action was not, in itself, unreasonable. That is not changed by my finding that conditions could be imposed on a grant of permission to mitigate that harm, because, in the absence of an application, the option to grant a conditional permission was not available to the Council in the same way as it is to me.

20. The assertion of 'visual clutter' from the raised platforms and railings needs little further explanation. It is, ultimately, a matter that I could be expected to fully assess and make a judgement upon at a site visit. While I have found no such harm, the general lack of analysis of this issue is not unreasonable behaviour as the potential effects can be easily understood.
21. In conclusion, I find that the Council has behaved unreasonably in two areas. Firstly, it has issued an enforcement notice that lacks clarity insofar as it refers to an extension. Secondly, it has failed to substantiate its case that the second basement level would result in material planning harm. The appellant has been put to wasted expense in addressing these matters through the appeal.
22. A partial award of costs is, therefore, justified in the terms set out below.

Costs Order

23. 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 Brent shall pay to Dr Ali Kazim Khamas Al-Rubie the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing their appeal case and costs application in respect of matters concerning:
- Errors in the enforcement notice and the ground (b) appeal insofar as they relate to the meaning of the alleged 'extension to the side';
 - Submissions about the acceptability of the second storey basement in the ground (a) appeal,
- such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Bale

INSPECTOR