



Costs Decision

Inquiry held on 24-26 January and 11 December 2024

Site visits made on 22 January and 2 February 2024

by **Jean Russell MA FRTPI**

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 20 June 2025

Costs application in relation to Appeal Ref: APP/C4235/X/22/3312461 Chester's Croft, Spath Lane East, Cheadle Hulme, Stockport, SK8 7NN

- The application is made under sections 195 and 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Stockport Metropolitan Borough Council for an award of full or, alternatively, partial costs against Mr Simon Daly o/b Chester's Croft Residential Park Ltd.
 - The inquiry was held in connection with an appeal against the decision of the Council to refuse to grant a certificate of lawful use or development for 'use of land as part of a caravan site, including the stationing of caravans for human habitation and use in conjunction with land on which caravans are so stationed'.
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DECISION

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

PRELIMINARY MATTERS

2. The Council's costs application, the appellant's response and the Council's final comments were in made in writing and are listed with other inquiry documents in the related appeal decision letter.
3. The Planning Practice Guidance (PPG) states that parties in planning proceedings, such as Lawful Development Certificate (LDC) appeals, normally meet their own expenses. However, where a party has behaved unreasonably and, in so doing, directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
4. Unreasonable behaviour may relate to procedural or substantive matters; both are subject to this costs application. The Inspector has discretion when deciding an award and may therefore take extenuating circumstances into account.

REASONS

Procedural Matters

5. The Council suggests that the appellant behaved unreasonably in respect of procedural matters by:
 - Submitting a drainage report after a deadline set via my direction at the Case Management Conference (CMC) and failing to provide appendices to Mr Brown's proof of evidence on time.

- Failing to name in advance what witnesses they would call to the inquiry.
- Failing to engage with the Council on production of the Statement of Common Ground (SoCG) and ‘generally...not [being] responsive to communications from the [Council] and Planning Inspectorate’.

The Drainage Report and Appendices to Mr Brown’s Proof of Evidence

6. I held the CMC on 20 November 2023 and sent the parties my note of the proceedings by email on the same day. The note recorded that the appellant had ‘obtained a technical report on the drainage infrastructure in the field’ but was undecided as to whether to submit that to the inquiry. I directed that:

‘...if the appellant is to rely on the report, they shall submit it to me and the Council by the end of this month...or not at all, in order that the Council has time to consider it and, if necessary, prepare rebuttal evidence’.
7. I emailed the parties on 1 December 2023 to record that the drainage report had not been received. Mr Brown then listed the report as Appendix PBA12 to his proof of evidence – and that proof was submitted on time on 3 January 2024 – but it was not accompanied by any of the listed appendices.
8. Rule 15(6) of the ‘Inquiry rules’ provide that any person required to send copies of a proof of evidence shall send the same number of copies of the whole or relevant part of any document referred to ‘unless a copy...or part of the document in question is already available’¹. That is relevant because all the appendices to Mr Brown’s proof, except for the drainage report and one aerial photograph, had been submitted with the appellant’s LDC application and/or appeal statement of case.
9. However, it was still confusing to say the least that Mr Brown submitted his proof with a list of appendices but no information as to where any of the documents could be found. He also provided no explanation as to whether documents that had seemingly been appended to both the statement and proof, but given different reference numbers, were in fact the same².
10. If Mr Brown wanted to rely on documents ‘already available’, as he was entitled to do, he ought to have written his proof on that basis, referring expressly to documents as previously submitted. By instead referring to appendices in a list specific to the proof, Mr Brown misdirected the Council and undermined the efficiency of the process. To be sure of understanding the appellant’s case and evidence, the Council was given no choice but to ask the appellant where the appendices were, as they repeatedly did between 3 and 18 January.
11. On the 18th, the Planning Inspectorate emailed Mr Brown and requested submission of the missing appendices by 14.00 on 19 January, the day before the inquiry would open. Mr Brown met that deadline insofar as he submitted a schedule of appendices and the missing aerial photograph by 12.18 hours on the

¹ The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002

² For example, the 2007 site licence for Chester’s Croft was appendix PBA2 to the statement of case but appendix PBA4 to the proof of evidence.

19th, but again he did not submit the drainage report. The Council chased this again and Mr Brown finally submitted the drainage report at 14.48 on the 19th.

12. Mr Brown recall submitting the drainage report earlier, but he has not referred to any record of doing so. That I admitted the report on 19 January does not show it was submitted on time. That the report was only three pages long and 'barely troubled' the inquiry does not make its late submission inconsequential.
13. It does not worry me that Mr Brown did not correlate his proof appendices to the location of the documents in the Council's core documents bundle. It was helpful that they prepared that bundle, but they were not required to do so by direction or agreement, and it did result in some duplication of paperwork.
14. However, as set out in my CMC note, the Council should have been afforded, but were not, reasonable time to consider the drainage report and decide for themselves whether to obtain and submit rebuttal evidence. It was unreasonable for the appellant to submit the report, the schedule of appendices and missing aerial photograph at such a late stage, and his doing so must have hampered the Council's ability to prepare for the inquiry.

Witnesses

15. The parties were asked to give names of witnesses they would call to give evidence at the inquiry ahead of and during the CMC. The Council also emailed the appellant to ask for a list of witness names on 17 January 2024.
16. As recorded in my CMC note, I was told that the appellant 'may' call any or all of four named witnesses. In the event, only one of those persons was called, so three potential witnesses did not appear. But the appellant's brother, Mr Daly, asked on the first day of the inquiry to speak in support of the appeal.
17. Mr Daly was not 'called' as a witness, but that does not make him a third party. Had the appellant and his agent prepared properly, they would have ascertained whether Mr Daly might wish to speak and accordingly notified the Council and Planning Inspectorate. I am grateful that Mr Rudd aided the inquiry by guiding Mr Daly through his evidence but, still, with no proof or statement to his name, and no forewarning, it took longer for him to give and be examined on his evidence than I would have expected the 'three potential witnesses' to need altogether.
18. In my view, Mr Daly's late request to appear as a witness was unreasonable behaviour on the part of the appellant – who, after all, represents a family business – and it was the reason why the inquiry required an additional half day.

Statement of Common Ground

19. As agreed at the CMC, the deadline for submission of the SoCG to the Planning Inspectorate was the same as that for the proofs, 3 January 2024. Under Inquiry Rule 16)(1), the SoCG should be prepared by the Council and appellant, but the latter only submitted a draft to the Council for discussion on 2 January 2024 when the relevant officer, Mr Smyton, was on annual leave. The final version of the SoCG was submitted to the Planning Inspectorate long after the deadline.
20. Clearly the appellant was not responsible for Mr Smyton's absence but that will have made little difference. I agree with the Council that the appellant did not

give the Council reasonable time to digest the SoCG and promote any changes they might have wished to make, especially when the Council had first enquired about the draft SoCG on 30 November 2023.

21. That the draft SoCG was short, 'anodyne' and 'did not progress the appeal', as suggested by the appellant, does not explain why the Council was only given one day to review it. By contrast, they are reasons why the draft could have been sent to the Council earlier and the Council may have sought changes.

Conclusion on Procedural Matters

22. I find that, taken together, the failure to clarify the organisation of the appendices to Mr Brown's proof and to provide the missing drainage report and aerial photograph on time; to provide an accurate list of inquiry witnesses in advance of the inquiry; and to give the Council just one day to agree a draft SoCG amounted to a pattern of disregard for the what the PPG describes as 'the requirements and deadlines of the appeals process'³.
23. The PPG states that lack of co-operation with other parties, delay in providing information or other failure to adhere to deadlines are examples of unreasonable behaviour which may result in an award of costs. That is what happened here, and the extenuating circumstances described at the CMC are not relevant because the drainage report, proof appendices, witness names and SoCG were required after that.
24. I also find that the appellant's unreasonable behaviour in respect of procedural matters caused the Council to incur wasted expense, particularly through chasing up missing documents before the inquiry, and then sitting for an extra day because of Mr Daly's late decision to give oral evidence. On its own, this conclusion would justify a partial, rather than full award of costs to the Council.

Substantive Matters

25. The Council suggests that the appeal had no reasonable prospect of success, because it could not succeed simply on the basis of drainage infrastructure being present in the field, and the evidence of recreational use was inadequate. On that basis, the Council contends that the appellant behaved unreasonably by making the appeal at all.
26. I found in my appeal decision that the appellant had not shown that use of the appeal field as part of and/or in conjunction with a caravan site was probably lawful on the date of the LDC application. However, the case was sufficiently complicated, in terms of legal principles and factual evidence, that the outcome was not inevitable.
27. Alternatively, the Council claims, the appellant should have withdrawn the appeal when their attention was drawn by email on 18 January 2024 to **Berkeley Leisure Group Ltd [1995] Lexis Citation 3484**. Again, I disagree. The best I can say about Berkeley and the earlier case of **Axbridge** – putting aside my query about consistency with **Burdle** – is that they are relevant but turned on

³ PPG paragraph ref ID: 16-052-20140306

their facts. It cannot be said that any finding in Berkeley or Axbridge destined this appeal to failure.

28. The 'Wiltshire' appeal decision cited by the appellant also set no precedent but did show that, again in different factual circumstances, there may be a material change of use of adjoining land to use as part or and/or in conjunction with a caravan site, and that use may become lawful⁴. It was not unreasonable for the appellant to make that same argument in respect of the appeal field.
29. The appellant did not behave unreasonably in making or continuing to pursue the appeal, and the Council did not incur unnecessary expense in contesting it.

Overall Conclusion

30. I conclude that the appellant behaved unreasonably and caused the Council to incur unnecessary or wasted expense, as described in the PPG, in respect of procedural matters by failing to submit the drainage report or appendices to Mr Brown's proof of evidence on time; failing to name in advance their witnesses to the inquiry and then requesting that Mr Daly be heard; and delaying engagement with the Council on production of the SoCG.
31. The Council has not demonstrated, however, that the appellant behaved unreasonably in the substantive matters of making or continuing to pursue the appeal. A partial but not full award of costs to the Council is justified.

Costs Order

32. In exercise of the powers under s250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Simon Daly o/b Chester's Croft Residential Park Ltd shall pay to Stockport Metropolitan Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in chasing up or dealing with the drainage report and appendices to Mr Brown's proof of evidence, the additional witness to the inquiry and the Statement of Common Ground. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
33. The applicant is now invited to submit to Mr Simon Daly o/b Chester's Croft Residential Park Ltd, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jean Russell

INSPECTOR

⁴ APP/Y3940/X/23/3332851