



Costs Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 13 August 2025

Costs application in relation to Appeal Ref: APP/Y3940/C/24/3353179

Land at Lydiard Green, Lydiard Millicent, Swindon, Wiltshire SN5 3LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wiltshire Council for full award of costs against Mr James Forty.
 - The appeal was against an enforcement notice alleging without planning permission, operational development comprising the erection of three buildings.
-

Decision

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

Reasons

2. 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.
3. The Government's national planning guidance is clear that unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. The Council is seeking a full procedural award of costs in dealing with the appellant's Ground (d) appeal and the basis for this is set out below.
4. The Council's claim is due to the unreasonable behaviour of the appellant when clearly there was no case to be made that, at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. To succeed on ground (d) it would have been for the appellant to show that on the balance of probabilities the buildings were substantially complete by the date of the Notice, 5 September 2024.
5. The appeal form was submitted on 4 October 2024. The form advised that the appeal was being made on Grounds (d), (f) and (g). The appellant, at the time, was not professionally represented. The appeal form at Part E Grounds and Facts, lists the brief reason for the appeal on ground (d) as '4-year ruling in town planning allowing immunity from enforcement actions'.
6. The appellant advised the Council on 11 November 2024 by email¹ that they had instructed a planning consultant to act on all planning matters within the land. A start letter was sent to the parties dated 17 January 2025 by the Planning

¹ Appendix 1 LPA Final Comments

- Inspectorate (PINS). This informed the parties that, among other things, appeal statements to support their cases were due by 28 February 2025.
7. The Council submitted its appeal statement on 28 February 2025, which included its response to the appellant's Ground (d) appeal. The appellant also submitted their appeal statement on 28 February 2025 which stated that they no longer intended to pursue their Ground (d) appeal. This was on the basis that following an assessment of the works that had taken place, it was concluded that "the operational development referred to in the Notice had not been substantially completed more than four years prior to the date of the issuing of the Notice".
 8. Although the appellant was not initially professionally represented, they did instruct an agent in November 2024. It is stated that following instructions, the site and the relevant planning history was investigated. As a result of those investigations the appellant was advised that due to the unfinished state of the building works, the appeal on Ground (d) should not be pursued. I am not informed of when the initial investigations were undertaken but I do not consider it would be unreasonable to assume that this information was available sometime prior to writing the statements and submitting them to PINS.
 9. The Council considers that it is entirely unreasonable for the appellant to have only advised the Planning Inspectorate and the Council that they were withdrawing the Ground (d) appeal on the day of the deadline to submit evidence for the appeal. The Council claims that the appellant had every opportunity to do so in advance of the deadline for the appeal statements. The Council considers that the appellant's unreasonable behaviour has directly caused the Council to incur unnecessary and wasted expense in the preparation and submission of their Ground (d) appeal rebuttal.
 10. In response to the application for costs, the appellant considers that as part of the due diligence undertaken by the Council, investigations to determine the extent of the building work, and the timescale over which that work had taken place, would have been undertaken by them before enforcement action was justified and before a decision to issue the Enforcement Notice was taken. As a result, the only abortive work incurred by the Council would have been related to the re-stating of the conclusions reached as a result of investigations prior to the issuing of the Enforcement Notice rather than in response to the appellant's initial appeal on Ground (d).
 11. Overall, I consider that in this respect the appellant has behaved unreasonably and thereby caused the Council to incur unnecessary or wasted expense in the appeal process in preparing for its case on the ground (d) appeal. The Council may have been prepared, to an extent, to defend an appeal against the Notice, but they will likely not have anticipated a ground (d) appeal due the buildings being far from complete. And although the statement on that ground is brief, it has still been considered as part of the full submissions. Had the appellant withdrawn their appeal on ground (d) once they had completed their investigations, the Council would not have incurred unnecessary wasted expense in compiling its response.

Costs Order

12. 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 appellant,

Mr James Forty, shall pay to Wiltshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending the appeal on ground (d). Such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to the appellant, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S A Hanson

INSPECTOR