
Costs Decision

Hearing held on 10 September 2025

Site visit made on 10 September 2025

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2025

Costs application in relation to Appeal A Ref: APP/V2255/C/25/3366417 Land at The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne ME8 7UX

- 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 Mr Paul Hancock for a full award of costs against Swale Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the change of use of the Land for the storage and distribution of materials and equipment and the stationing and use of vehicles in relation to a 'scaffolding' business (use class B8).
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Costs application in relation to Appeal B Ref: APP/V2255/W/25/3366416 The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne, Kent ME8 7UX

- 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 Mr Paul Hancock for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for development described as retrospective application for the change of use of the existing yard to a scaffolders yard (Class B8), including access.
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Decision

The submissions for Mr Paul Hancock

1. The costs application was submitted in writing.

The response by Swale Borough Council

2. The response was made orally at the hearing.

Reasons

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. The appellant's application is made on the basis of a substantive claim, being one which relates to the merits of the appeal. In the event that a full award is not made, the appellant requests that consideration be given to a partial award relating to the costs incurred following submission of the appellant's statement and evidence.

5. Firstly, the appellant considers the Council acted unreasonably by refusing planning permission on a planning ground capable of being dealt with by conditions, and that the same rationale applied to the need for enforcement action.
6. The appellant's 2023 noise survey and assessment ("the 2023 noise assessment") in part concluded that lorries leaving the yard had a potentially medium noise impact. It advised of potential mitigation measures including an acoustic barrier and a phasing out of older lorry-style vehicles. A Mid Kent Environmental Health officer did not object, on the basis that the mitigations recommended were reasonable "assuming they can be proven to be effective", but also requiring limitations on hours of operation.
7. I note the Council's planning service concluded an acoustic barrier 2m higher than the existing boundary treatment would cause visual and amenity impacts on occupiers of the neighbouring dwelling. Their decision not to grant planning permission with a condition requiring the quieter vehicles was made on the basis that it would be difficult to draft an enforceable condition, that the noise from departures was a combination of that from vehicles and employees and the gate alarm, and that it would be likely to be at a cost which was unviable. On the latter point, the appellant had already replaced the oldest lorry months before the time of the refusal, although I have seen no evidence that this was made known to the Council's planning service.
8. Although the Council were wrong in relation to the viability of replacing the oldest lorry, the response from Environmental Health expected both potential mitigation measures to be carried out to ensure a 'suitable' reduction in noise levels was achieved, with reference to a recommended 5dB(A) below background levels, in addition to limiting hours of operation and requiring testing after mitigation measures were in place. With the Council having concluded an acoustic barrier of 3.8m or higher would not be acceptable and the appellant not accepting the later working hours suggested, it was not unreasonable for the Council to conclude the development could not be made acceptable by the imposition of planning conditions on the basis of the 2023 noise assessment.
9. Secondly, the appellant considers it unreasonable that the Notice was issued on the same basis as the refusal of the application. That the Council did not respond to correspondence, sent around the same time as the Notice was issued. And, that the Council failed to take the opportunity to invite a further application and withdraw the Notice.
10. The appellant's subsequent noise impact assessment of July 2025 ("NIA 2025") was submitted with appeal statements of case. At that stage the appellant reviewed the 2023 noise assessment and came to different conclusions on the noise levels recorded for the 2023 noise assessment and with the change to the newer lorry.
11. But the Council's appeal statements of case were submitted on the basis of the original 2023 noise assessment. In that context it was not unreasonable for the Council to have responded as it did without technical acoustic evidence. The 2023 noise assessment identified a potentially medium noise impact, which the report methodology equates to a Significant Observed Adverse Effect Level, even if the appellant later considered otherwise. The Council's response to its reason for refusal was therefore not unsupported by objective analysis. Neither had the Council prevented or delayed development which should clearly be permitted.

12. As to whether the Council acted swiftly enough in reviewing the new NIA, it did not provide a 'Final Comments' response to the appellant's new noise information in mid August 2025. It may have been possible for the Council to review its case earlier, even though the two-month period between submission of the new NIA and the date of the Hearing fell during the holiday season.
13. However, as comments had been received by other interested parties and the time for their responses had passed at the time the appellant submitted the NIA 2025, those parties had no opportunity to respond to the new NIA except at the Hearing. For that reason, I determined the Hearing must proceed in any case and, even if the Council had reviewed its case more swiftly after receipt of the new NIA, the Hearing would have occurred in any event.
14. The Council's revised position on noise relied on the imposition of planning conditions to protect the living conditions of local residents. In my appeal decision I also found there to be a need for such conditions, on the basis that an unlimited use, without limited hours of operation, would not have been acceptable in planning terms. It was therefore not unreasonable for the Council not to have withdrawn its enforcement notice. Had it done so, and the appellant had then withdrawn his Section 78 planning appeal, the use would have been left without planning permission and without conditions or limitations.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and neither a full award, nor a partial award, of costs is warranted.

Decisions

16. The applications for awards of costs are refused.

Peter White

INSPECTOR