



Costs Decision

Inquiry held on 2 and 3 July 2025

Site visit made on 3 July 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th September 2025

Costs application in relation to Appeal Ref: APP/X0415/X/25/3360669

Land adjacent to Jewsons, Chesham Road, Hyde End, HP16 0RD

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wards of London Properties Limited for a full or, alternatively, a partial award of costs against Buckinghamshire Council.
- The inquiry was in connection with an appeal against the refusal of a certificate of lawful use (LDC) for the use of the site as a builders' merchant.

Decision

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

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 applicant claims that the Council behaved unreasonably and caused him to incur wasted expense by taking an inconsistent approach to the appealed and previous 2017 LDC applications, failing to substantiate or being vague as to their assertions as to the lawfulness of the claimed use, advancing the "sawmill" and "subdivision" arguments to the effect that there was a loss of lawful use rights in 2005, and by misapplying case law.
4. The Council refused the 2017 LDC application¹ for the existing use of the appeal site for 'the storage of bricks and other building supplies, vehicles, plant machinery and other equipment and materials such a use being a builders' merchant (sui generis)' on the basis that that use was 'materially different from the lawful use as identified in' the 2008 appeal decision letter. I can understand why the appellant considers that refusal inconsistent with the Council's now stance that the builders' merchant use is not in fact lawful.
5. However, I cannot review the 2017 LDC decision save to observe that the land was probably not then in existing use as a builders' merchants anyway. The Council was not bound by their 2017 decision when they came to ascertain the lawfulness of the proposed builders' merchant use for the instant application and appeal. By contrast, the Council was expected to review the new evidence put before them with an open mind. The Council did not behave unreasonably in not following either the 2017 or any previous decision.

¹ LDC application ref: CH/2017/0746/EU

6. I also find that the Council did not generally fail to substantiate their reason for refusing to grant an LDC here. The appellant's case was that it would be lawful to use the site as a builders' merchants use because s57(4) of the Town and Country Planning Act 1990 provides that planning permission is not required for what would have been the lawful use had development subject to an enforcement notice not been carried out. The Council outlined a clear position in their report on the LDC application that s57(4) was not engaged so as to allow for resumption of the builders' merchant use because there had been another change of use of the land after the 2007 enforcement notice (EN1) was issued.
7. The Council maintained that position throughout the appeal and thereby gave adequate explanation of their reason for refusing the application, bearing in mind that the onus of proof was not on them. It was for the appellant to demonstrate that the proposed use would have been lawful, on the balance of probabilities, if instituted or begun on the date of the LDC application. While I did not agree with all submissions from the Council, as set below, I ultimately found in favour of their approach on this point from the evidence before me.
8. It follows from my decision that the Council did not wholly misinterpret or misapply the relevant case law. In particular, I support their analysis that *Young* applies and is fatal to the appellant's case. However, I agree with the appellant that the Council erred in applying other authorities on which they sought to rely on the submission that the builder's merchant use was not lawful even before EN1 came into effect.
9. The Council argued that EN1 did not give rise to a right of reversion via s57(4) to a builders' merchant use, even though EN1 alleged that there had been a material change from that exact use to storage, because there had been a prior material change of use through cessation of sawmill activities and/or because of subdivision of the 'original site'² by erection of fencing and an altered access. The Council cited *Panton* and *Ocado*, for example, to support their contention that lawful use rights had been lost upon formation of a new planning unit.
10. However, *Panton* and *Ocado* did not involve situations where lawful use rights could have been preserved via s57(4). The Council's arguments pertaining to the pre-EN1 lawful use and planning unit are at odds with the 2008 appeal decision where it was found that a builders' merchant use **had** become lawful through the passage of time by around 2001; the subdivision of the original site had resulted in creation of a new planning unit but **not** necessarily a material change of use; and, nonetheless, there had been a material change of use from the lawful builders' merchants use to an unauthorised storage use as alleged by EN1.
11. The 2008 appeal decision was not challenged at the time. There is nothing to show it was inaccurately decided, including in the light of subsequent court judgments, and no new facts have come to light either. However, I agree with the appellant that the Council's submissions on the lawfulness of the builders' merchants use prior to EN1 were underpinned by erroneous understanding of case law, and they were inaccurate, hopeless and unreasonable.
12. I also consider that the Council's unreasonable submissions caused the appellant to incur unnecessary expense. It was plainly necessary for the appellant to contest the Council's arguments and advance a case that the builders' merchant use was lawful when EN1 came into effect through their written representations and by

² The appeal site and the adjacent Jewson's site

spending what proved to be considerable time at the inquiry. Although the Council's late unearthing and submission of a file note made in 2002 (referred to in the 2008 appeal), and of the photos attached to it during proceedings, were unfortunate, to my mind they were not, in themselves, any attempt to knowingly withhold relevant information or act unreasonably.

13. It follows from my reasoning above that a full award of costs to the appellant would be unjustified. However, I conclude that the Council behaved unreasonably in contending via the "sawmill" and "subdivision" arguments that the use of the land as a builders' merchants was not lawful prior to issue of EN1. That contention rested on the misapplication of case law, and it caused the appellant to incur unnecessary expense for which he should be granted a partial costs award.

Costs Order

14. 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 Buckinghamshire Council shall pay to Wards of London Properties Limited, the costs of the appeal proceedings described in the heading of this decision limited to those incurred in contesting submissions that the use of the land as a builders' merchants was not lawful prior to issue of EN1 in terms of the "sawmill" and "subdivision" arguments, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Buckinghamshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR