



Costs Decision

Hearing held on 8 and 9 July 2025

Site visit made on 9 July 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2025

Costs application in relation to Appeal A Ref: APP/W1715/C/25/3361911 and Appeal B Ref: APP/W1715/C/25/3361912

Land at Broadway Farm, Broad Oak, Botley SO30 2EU

- 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 Eastleigh Borough Council for a partial award of costs against Mr Maurice Doe of CCW Services Limited (Appeal A) and Mrs Louisa Jane Doe (Appeal B).
 - The appeals were against an enforcement notice alleging a material change of use to a use for parking and storage.
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Decision

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

The Submissions and Relevant Guidance

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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 reason for the costs application is summarised by the costs applicant (the Council) as follows:
 - The costs incurred by the Council in preparation of evidence for grounds of appeal that were withdrawn late, namely (d) and (f);
 - The costs of attendance at an inquiry, when a less formal and resource intensive procedure was more appropriate; and
 - Pursuing a planning application for the “as built” proposal which was clearly not in accordance with the development plan and statutory consultee advice.
4. I have noted the appellants’ response to these in reaching my decision.

Reasons

Appeals procedure

5. As all parties are aware, whilst the appeals were initially intended to proceed by way of a public inquiry, the procedure was changed a matter of days before the opening of the inquiry. I note the Council’s suggestion early in the process that the appeals were best considered by way of a hearing or the written procedure. However, the appeals initially continued via the public inquiry procedure, not as a

- result of the appellants' insistence on this. Rather it was my decision, having reviewed the parties' evidence prior to the submission of proofs of evidence.
6. Having regard to the Planning Inspectorate guidance on the determination of the appeal procedure, I acknowledge that there may not have been a particular need for evidence to be given under oath in this case. However, the determinative matters in these appeals remained complex and evidence required testing. In particular, the parties' respective cases on the legal grounds of appeal required a degree of interrogation. In view of this, I was not minded to change the appeals procedure, even after reviewing the parties' submissions at the proof of evidence stage. I was satisfied that, following the parties' agreement on the change of appeals procedure, I could adequately conduct the appeals event as a hearing. Nevertheless, had the appeals continued as a public inquiry, I would not have considered this procedure to have been unnecessary in this case.
 7. The appropriate appeals procedure is a matter of judgement for the Inspector. This is a case that demonstrates that in most cases there is no definitive line in deciding between one procedure and another.
 8. Notwithstanding the above, I acknowledge that the provision by both parties of separate proofs of evidence on discrete matters resulted from the intended inquiry procedure. However, I cannot regard the provision of this evidence in such a manner to have been unnecessary in this case. On the contrary, in reaching my decision there has been a need for me to have regard to the written evidence of each of the Council's witnesses, as well as that provided by each of the appellants' witnesses. That the parties' evidence was provided in separate documents on a topic by topic basis, rather than as a complete appeal statement usually submitted for a hearing is of little consequence.
 9. In view of the above, despite a change of appeals procedure in this case, I cannot regard the appellants as having behaved unreasonably, in view of their insistence on a public inquiry and their late agreement to a change of procedure.

Grounds (d) and (f)

10. As confirmed in my note prior to the case management conference (CMC)¹, the purpose of the CMC is to assist all in focusing on the main issues; to clarify the evidence to be submitted to the inquiry; and to reduce the inquiry time to that which is strictly necessary. This includes to clarify a parties' case where there might be some ambiguity.
11. As submitted, the appellants' ground (d) appeals related only to the rubber matting that had been laid on the appeal site. This was confirmed by the appellants at the CMC. It was only after the discussions during the CMC that the substance of the appellants' case on ground (d) was understood. As such, I suggested at the CMC that the appellants' ground (d) case ought to be considered as part of the ground (f) appeal. It was a matter of days after the CMC that the appellants confirmed the withdrawal of their ground (d) appeals.
12. I acknowledge that the Council may have undertaken some preparatory work in respect of the ground (d) appeals at that point, although there is limited evidence of this. Nevertheless, the parties are encouraged to review their case at all stages of

¹ Held on 2 June 2025 and subject of a pre and post CMC note.

an appeal. The appellants' withdrawal of their ground (d) appeals following the CMC is a demonstration of this and I consider this review to have been carried out promptly (i.e. within days of the CMC). Accordingly, I cannot regard the appellants' withdrawal of the ground (d) appeals at that stage of the proceedings to be a demonstration of unreasonable behaviour.

13. Moving on, the ground (f) appeals were withdrawn at the start of the hearing, which there can be no dispute is particularly late in the proceedings. The appellants suggest that it was only following the review of all of the evidence, which would include that submitted at the proofs of evidence stage, that the decision to withdraw the ground (f) appeals was made.
14. My post CMC note sets out the main issue with regard to the ground (f) appeals, as agreed during the CMC. It should, therefore, have been clear at that stage what it was necessary for the appellants to demonstrate in order to succeed on ground (f). Regardless of the Council's case made at the proofs of evidence stage, the appellant should have reviewed their case on ground (f) following the CMC.
15. Nevertheless, as the ground (f) appeals had only been added by the appellants at the statement of case stage of proceedings, I note that the Council's position in response to the ground (f) appeals was only set out in the proof of evidence of one of its witnesses. It is, therefore, understandable that the appellants' decision to withdraw the ground (f) appeals was made after having sight of the Council's case on ground (f) in writing.
16. Notwithstanding the above, I do find the appellants' decision to withdraw their ground (f) appeals at the start of the hearing to be unreasonable behaviour. I see no reason why this decision could not have been made some weeks before the start of the hearing, following the receipt and review of the Council's proofs of evidence. However, there is little before me to demonstrate what abortive work had been undertaken by the Council to prepare for its oral submissions on ground (f) at the hearing. Furthermore, no time was wasted at the hearing dealing with ground (f).
17. For the reasons given above, I cannot conclude that the vast majority of the appellants' approach to their ground (d) and (f) appeals demonstrates unreasonable behaviour. Where I have found there to be unreasonable behaviour, there is little to persuade me that this has resulted in unnecessary or wasted expense in the appeals process.

Ground (a)

18. The Council refer in its costs application to the 'as built scheme'. As I note in my decision, the deemed planning application is for the whole of the matters alleged in the notice (i.e. the material change of use of the whole of the appeal site). If this is what is meant by the Council when it refers to the 'as built scheme', I cannot find the appellant (the ground (a) appeal is made only on Appeal A) at fault in this case as they were clear from the outset that permission was sought only for the use of part of the land to which the notice relates. The appellant has never made the case that planning permission ought to be granted for the use of the whole of the appeal site for the purposes alleged.
19. In the alternative, if the reference to the 'as built scheme' is to the use of the extent of the existing tarmac hardstanding on the northern part of the appeal site, the

Council appears to suggest that the appellant conceded during the hearing to the Council's case with regard to the need for a 15 metre buffer on this part of the appeal site, and that this demonstrates unreasonable behaviour. This is not, however, my understanding of the appellant's case. Throughout the hearing the appellant maintained that the use of the whole of the hardstanding was acceptable, without the need for a 15 metre buffer. The plans proposing the buffer were provided during the hearing in the alternative, in the event that I was not with the appellant on this matter.

20. Notwithstanding the above, I am satisfied that the appellant has provided robust evidence in seeking planning permission for the use of the northern part of the appeal site alone. This includes the evidence that supports the use of the land within the 15 metre buffer that was subsequently shown on plans submitted during the hearing. For this reason, whilst I have not found in the appellant's favour with regard to the use of land within the buffer, I do not find them to have behaved unreasonably in seeking permission for the use of the entire hardstanding area.
21. It may well be the case that the evidence provided by the appellant during Appeal A is that requested by the Council during previous planning applications and appeals. That this was not provided in those previous cases but has only been provided now does not demonstrate unreasonable behaviour in **this** appeal process.
22. I acknowledge that the Council has previously refused permission for the development that is the subject of the appeal that was before me. This does not mean that the appellant's appeal on ground (a) was unreasonable, particularly as there has not been a previous appeal decision in respect of the development that is the subject of this appeal. Indeed, this appeal process allows the appellant the opportunity to attempt to overcome what the Council describes as the insurmountable objections to the development, including to have all material considerations considered in the planning balance. The appellant's evidence that attempts to overcome the Council's objections is robust and I have, in part, found in favour of the appellant, having considered all matters relevant in this case.
23. In view of the above, I conclude that the appellant has not behaved unreasonably in seeking planning permission for the development alleged in the enforcement notice.

Conclusion

24. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeals process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR