
Costs Decision

Site visit made on 15 October 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 OCTOBER 2025

Costs application in relation to Appeal Ref: APP/A2280/C/24/3358271

Land at 89 Bryant Road, Rochester, Kent, ME2 3ES

- 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 Medway Council for a partial award of costs against Jagdeep Khiara.
 - The appeal was against an enforcement notice alleging without planning permission, the conversion and change of use of a single storey store to the rear of the property to a self-contained residential flat.
-

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 Council claim that the appeals made on grounds (a), (d) and (e) of section 174(2) of the Act had no reasonable prospect of success and that the Council has incurred unnecessary and wasted expense in responding to these grounds of appeal. In respect of such a claim, it is necessary that I consider whether the appellant has substantiated each ground of appeal. I deal with each in turn as follows.

Ground (a) appeal

4. In respect of the outlook and privacy element of the living conditions main issue, I do not find that the appellant has reasonably substantiated why the development is acceptable. Moreover, the appellant says that the *'dwelling meets the basic requirements of habitation'* but does not suitably address the fact that the Government's 2015 Technical Housing Standards – Nationally Described Space Standard (NDSS) refers to minimum gross internal floorspace and storage standards.
5. In respect of the SPA main issue, the appellant did not provide me with enough information (including a completed planning obligation) to enable me to reach a conclusion that the development does not/would not cause harm to the integrity of the SPA. This is not a matter that can be left to condition or delayed for future consideration given section 63 of the Conservation of Habitats and Species Regulations 2017. In this regard, I find that the appellant, who is professionally represented, has displayed unreasonable behaviour. Given paragraph 193 of the

National Planning Policy Framework 2024 (as amended in 2025) which states that *'if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused'*, the appellant's failure to provide a completed planning obligation, or indeed any other SPA mitigation that would ensure compliance with local and national biodiversity policies, amounts to unreasonable behaviour. This resulted in the Council incurring unnecessary and wasted expense in the appeal process from the point of view of having to respond to this matter.

6. In terms of the above matters, I do not find that the ground (a) appeal has been reasonably substantiated by the appellant. In this regard, the appellant has displayed unreasonable behaviour leading to the Council incurring wasted expense in the appeal process.
7. While I have found that the development is unacceptable in terms of outside amenity space, the appellant nonetheless refers to the availability of public open space and a sports facility nearby. While I have concluded in the appeal decision that this is not sufficient to outweigh my identified concerns about the outside amenity space, I nonetheless find that the appellant did provide sufficient reasoning in terms of this matter and hence unreasonable behaviour was not displayed. Moreover, I concluded in my decision that use of the alleyway would not result in any material crime or vulnerability issues, and, in fact, the area could be made safer as outlined by the appellant in terms of improved lighting and surveillance. In respect of these matters, I do not consider that the appellant has behaved unreasonably and hence the Council has not incurred wasted expense in the appeal process.

Ground (d) appeal

8. While the appellant seeks to correctly differentiate between the LDC appeal four-year enforcement action immunity period, and the enforcement appeal four-year enforcement action immunity period, the appellant originally commented that the only evidence submitted as part of the enforcement notice appeal over and above that considered by the LDC inspector was the letter from Estelle Summer of Wards of Kent Lettings, dated 5 December 2023, which states *'I can confirm that I went to the above property in August 2018 and recommended a marketing figure of around £775.00pcm'*.
9. Notwithstanding the above, the evidence is that the Wards of Kent Lettings letter above was in fact before the previous inspector when he considered the LDC appeal. The LDC inspector reached a very clear conclusion in respect of the same evidence relating to the 2018 to 2022 period. In any event, the provision of a marketing figure by an agent does not in itself address the *'on and off'* occupation comment of the appellant for the 2018 to 2022 period. As was the case in respect of the LDC appeal, the appellant's evidence does not precisely and unambiguously demonstrate, on the balance of probability, continuous use of the appeal building as a self-contained flat during the 2018 to 2022 period.
10. In respect of the ground (d) appeal, and based on the collective evidence before me, I do not find that the appellant's ground (d) appeal had a reasonable prospect of success. This is in the context that the PPG states that unreasonable behaviour which may give rise to a substantive award against an appellant is *'the appeal follows a recent appeal decision in respect of the same, or a very similar,*

development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period'. The appellant has failed to substantiate why the evidence submitted as part of the enforcement notice appeal should lead me to reach a different conclusion to that reached by the LDC appeal inspector for the 2018 to 2022 period.

11. I therefore conclude that the ground (d) appeal did not have a reasonable prospect of success and, moreover, the appellant failed to afford appropriate weight to the LDC appeal decision and reasoning. Therefore, the appellant has displayed unreasonable behaviour leading to the Council incurring wasted expense in the appeal process.

Ground (e) appeal

12. An appeal made on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act. The appellant has not provided any relevant evidence to support the ground (e) appeal.
13. The appellant's case made on ground (e) related to the appeal building not being used as a store. This is not a ground (e) matter and despite this being made clear by the Council in its statement of case, the appellant continued to display unreasonable behaviour up to final comments stage in so far as saying *'the appellant reiterates their claim that the building has never been used as a store room, but has always been for residential purposes'*.
14. Given the above, the ground (e) appeal did not have a reasonable prospect of success and was not suitably substantiated by the appellant. Therefore, the appellant has displayed unreasonable behaviour leading to the Council incurring wasted expense in the appeal process.

Conclusion

15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council responding to some of the ground (a) appeal matters (namely outlook/privacy, NDSS, outside amenity space and SPA considerations), the ground (d) appeal, and the ground (e) appeal. A partial award of costs is therefore warranted.

Costs Order

16. 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 Jagdeep Khiara shall pay to Medway Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to ground (a) appeal matters (namely outlook/privacy, NDSS, outside amenity space and SPA considerations), the ground (d) appeal, and the ground (e) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

D Hartley

INSPECTOR