



Costs Decision

Site visit made on 27 October 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2025

Costs application in relation to Appeal Ref: APP/J0405/X/25/3359370

Hill Farm, Akeley Road, Lillingstone Lovell, MK18 5BL

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Chris Porter for a full award of costs against Buckinghamshire Council - North Area (Aylesbury).
 - The appeal was against the refusal of a certificate of lawful use or development for use as a dwellinghouse.
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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 appellants contend that the Council has not acted in a reasonable manner as they failed to follow well-established case law in relation to the issue of abandonment. This was highlighted in the appellants' appeal submission. However, the Council did not review their decision, nor did they submit a statement of case nor final comments to support their appeal. The appellants contend this was unreasonable behaviour which has caused them to incur unnecessary or wasted expense in the appeal process. A full award of costs is sought.
4. In response the Council advise that they did submit a statement of case, but due to a technical error it was not sent in time and the Planning Inspectorate refused to accept its late submission. However, they contend that they were not obliged to submit a statement of case and to rely on their Officer Report. They do not consider that the non-submission of a statement of case has caused the appellants to incur any wasted or unnecessary expense in the appeal process.
5. PPG advises that a local planning authority may be at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples include acting contrary to, or not following, well-established case law; and by not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management¹.

¹ PPG: Paragraph: 049 Reference ID: 16-049-20140306

6. The local planning authority were not obliged to submit a statement of case but to rely on their Delegated Officer Report (OR)². However, the OR was clearly flawed. Firstly, there was no dispute between the parties that the property had a lawful use as a dwelling, having been constructed as a dwelling prior to the introduction of planning regulations and used continually as a dwelling until the previous occupier's death in 2019. Thus, the requirement to demonstrate four years continual use was not a relevant consideration in this LDC application (notwithstanding that the relevant time period for the use of a dwelling constructed as a dwelling would be 10 years). Instead, the relevant consideration was whether there had been any subsequent change of use since 2019 when the building was last occupied as a dwelling or whether that use had been abandoned.
7. The OR acknowledged that there was no evidence that there had been a subsequent change of use since 2019, however, in relation to the question of abandonment it referred only to previous conclusions made in relation to a planning application made by the applicants earlier that year, which sought to demolish the existing dwelling and erect a new one. In considering that application the Council had acknowledged that it was not known how long the building had been unoccupied, whether the building had been in any other use, nor the intentions of the owners of the building. However, it was concluded that considering the physical condition of the building its use was deemed abandoned³.
8. Following their refusal of planning permission for a replacement dwelling, the applicant submitted the application for an LDC, the subject of the appeal. They sought to establish that the use of the dwelling at Hill Farm remained lawful and had not been abandoned as previously concluded by the local planning authority. From the evidence before me, the OR, which the LPA rely on in defence of this appeal, does not review the local planning authority's previous conclusions on abandonment, despite the LDC application providing additional information in relation to established case law, further evidence in the form of a Statutory Declaration relating to the period of non-use, whether there has been any other use, and the owner's intentions. As set out in my decision, the physical condition of the building is only one consideration when determining whether a use has been abandoned and case law indicates that all four factors should be evaluated. It seems to me that had the Council considered and reviewed the other factors, i.e. period of non-use, any other use and intentions, which were clearly set out in the appellant's LDC and supported by a SD, they would, on the balance of probability, have come to a different conclusion, and the appeal could have been avoided.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 – North Area (Aylesbury) shall pay to Mr and Mrs Porter,

² Case officer Report and Recommendation, Ref: 2401252/CPE, LDC for existing use of dwelling house, dated 21 June 2024.

³ Officer Report, Ref: 24/00188/APP, Demolition of existing dwelling and erection of dwelling, dated 13 March 2024.

the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Buckinghamshire Council – North Area (Aylesbury), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR