



Costs Decision

Site visit made on 25 November 2025

by **P Brennan BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 December 2025

Costs application in relation to Appeal Ref: APP/Z1775/W/25/3372324

Mabe Business Centre Ltd, 350-352 London Road, Hilsea, Portsmouth PO2 9JY

- 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 Brian Mabe for a full award of costs against Portsmouth City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of a single storey timber shed.
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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 costs application asserts unreasonable behaviour on the part of the Council in terms of excessive delays in registering and determining the planning application, procedural inconsistency, application fee dispute and a failure to follow case law. It is also claimed that the Council made inaccurate assertions regarding the applicant's means to deceive regarding the certificate of ownership.
4. Most of the grounds raised relate to the Council's handling of the planning application. The application was submitted on 28 March 2025; however, the Council notified the applicant five weeks later that the submission was invalid. This was due to a number of technical details relating to the plans and seeking the payment of an additional fee as legislation had changed on 1 April 2025. Whilst the Council were within their remit to seek amended plans that met the validation criteria, the delay to advise of the issue was excessive. However, with regards to the failure to follow case law and the increase in fees, this is only of relevance where the application would have been 'valid' on the date of submission, and in this instance the application did not meet the Council's validation requirements and was not, therefore 'valid'. As such, the Council acted in accordance with case law regarding the 'made' or 'valid' date of the application.
5. With regards to the requirement to amend the red line boundary to include the vehicular access to the rear, the applicant quotes case law in *Wyatt v Fareham BC [2011]*. This established that land which is not affected by a proposed development does not fall within the scope of Article 7(1)(c)(i) of the Town and Country Planning (Development Management Procedure) Order 2015 and does not therefore have to

- be included within the red line boundary. The Council considered that the access to the site was an integral part of the scheme and therefore a red line boundary plan was required around the access as part of the validation criteria. In this instance, the Council was entitled to apply its own judgement to the plans and information it considered necessary to evaluate the application and enable validation of the planning application. This plan was subsequently submitted on 6 May 2025. A further request was then made by the Council regarding the certificate of ownership, which following the red line boundary alteration was initially incorrect.
6. All the requested information, including a revised certificate of ownership was submitted to the Council by 15 July 2025. The Council validated the application from 15 July 2025 with an eight-week determination date of 9 September 2025. However, the validation letter was dated 3 September 2025, a day after the appeal was lodged and some 23 weeks after initial submission.
 7. Following validation of the application, the Council offered the applicant a 'quick decision' following the statutory twenty-one day consultation period, but at no point advised that the decision would be a refusal of permission. As such, whilst the applicant refused the Council's offer and continued with the appeal thereby delaying the decision-making process further, an appeal was the inevitable outcome. However, the Council during the appeal process advised that whilst it would have refused the application, its issue, which solely related to the cladding materials on the building, could have been overcome by the imposition of a planning condition.
 8. On this basis, I find that the Council has acted unreasonably in its delay to firstly advise of the validation issues in a prompt and timely manner and then regarding the validation of the application, which appears to have been undertaken and 'backdated' following the submission of the appeal. Furthermore, in accordance with the National Planning Policy Framework and the PPG, had the Council not delayed the validation process to the degree that occurred, and then subsequently proactively worked with the applicant to a positive outcome, the appeal could have been avoided.
 9. I also find that the Council has acted unreasonably with regards to the appeal, as it continued to progress a case for refusing the application whilst advancing that a planning condition would overcome its issue with the development.
 10. With regards to the Council's assertions that the applicant purposely mislead the Council regarding site ownership, I find that this was unreasonable behaviour by the Council. The applicant did not deliberately conceal relevant evidence at the planning application stage but rather fell foul to validation requirements following the submission of a revised red line boundary plan that, at the insistence of the Council, included land that was not within the applicant's ownership.
 11. Overall, I find that the Council's behaviour has been unreasonable as it led to excessive delays in the process, delayed development that clearly should have been allowed subject to planning conditions and led to unnecessary and wasted expense in having to appeal the Council's decision.

Costs Order

12. 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 Portsmouth City Council shall pay to Mr Brian Mabe, 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 Portsmouth City 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.

P Brennan

INSPECTOR