



Costs Decision

Hearing held on 7 May & 1 October 2025

Site visit made on 6 May 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2025

Costs application in relation to Appeals A-E Refs: APP/J2210/C/25/3358538, 3358540, 3358541, 3358542 & 3358543

Moate Farm, Stodmarsh Road, Canterbury, Kent, CT3 4AP

- 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 the third party attending the Hearing, Fordwich Town Council and the Friends of Fordwich District, for a partial award of costs against the appellants, Ms Philomena Brown, Mr Tom Delaney and Mr Peter Delaney.
 - The appeals were against 5 enforcement notice alleging either the breach of conditions relating to three planning permissions on different part of the wider site or the material change of use of parts of the site (Areas B and C).
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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 application for a partial award is in relation to the third party having to deal with highways issues, including being represented by a highways expert at the Hearing, Mr Paul Lulham.
4. This is in the context of both Kent County Council (KCC) as Highway Authority and Canterbury City Council as the Local Planning Authority specifying and agreeing with the appellants that the sole access to the site from Stodmarsh Road would be safe if visibility splays of 2.4m by 59m in each direction, with no obstructions in height above 1.05m within these splays, could be achieved. Indeed, the previous appellants (in the January 2024 Inquiry) – Tom and Peter Delaney – accepted that such visibility splays needed to be provided¹.
5. This was a requirement of the last planning permission (for Area C of the site), granted on appeal on 4 October 2017, which only granted permission for 8 pitches (16 caravans in total), whereas the whole site is now occupied by in excess of 60 habitable caravans, far in excess of the number granted by this and the other two permissions. The number of vehicle movements into and out of the site is therefore

¹ As set out in para 22 of the Costs decision of 23 February 2024 in relation to appeals APP/J2210/C/21/3281250, 3281251 & 3275629

far in excess of the number envisaged by these permissions, although the Inspector in that last appeal considered the visibility splays were needed for that scheme, as a pre-commencement condition. However, the appellants do not control all the land within the eastern visibility splay, such that they cannot satisfy the highway safety requirements.

6. The Hearing was adjourned on 7 May in order that I could read the evidence submitted at the previous Inquiry, including that of Mr Lulham, which set out that the appellants could not achieve the required visibility splays within their or KCC's ownership, evidenced unchallenged at the Hearing. The previous costs award against the Delaneys (paragraph 24 of the costs decision) made clear that their failure to address the highway safety concerns then for over two years constituted unreasonable behaviour resulting in the then Rule 6 Party's wasted expense in having to engage the expertise of Mr Lulham.
7. The appellants in the current appeals have submitted no written highways evidence, despite the award of costs against them on the same issue before. They made no comments on the third party's or the Council's Statements of Case in this regard.
8. All that happened was that Mr Woods, their agent, submitted an appeal decision² a day or so before the second day of the Hearing without indicating what passages the appellants intended to rely on or what the issue was. And then, without any warning, he produced Mr McMurtary on the Hearing's second day, a highway witness, who commented on the highway safety aspects of that appeal decision and alleged, without any evidence and without even apparently having visited the Moate Farm site, that based on that decision it was unnecessary for the agreed visibility splays to be provided here. Luckily, the third party had retained Mr Lulham's services at the Hearing.
9. It was clearly procedurally totally unreasonable of the appellants to have changed their position in regard to the need for the visibility splays at the Hearing and not to have informed anybody that they intended to field a highway expert. I have found that Mr Lulham's highway evidence stands up against what can only be described, at best, as very weak arguments put forward orally by the appellants' surprise highways witness on the day. The third party has clearly been put to paying the unnecessary expense of Mr Lulham. I also acknowledge that this expense is compounded, since the costs of the previous appeal in this regard have not yet been paid either.

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 Ms Philomena Brown, Mr Tom Delaney and Mr Peter Delaney shall pay to Fordwich Town Council and the Friends of Fordwich District, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the highway safety issues that led to the third party having to engage the expert services of Mr Paul Lulham; such costs to be assessed in the Senior Courts Costs Office if not agreed.

² APP/M3645/W/23/3331609, allowed on 29 January 2025

The applicant is now invited to submit to the appellants, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Nick Fagan

INSPECTOR