



Costs Decision

by **Grahame J Kean BA (Hons) Solicitor MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 January 2026

Costs application in relation to

APP/K0940/X/23/3332702 Shed at Yanwath Hall, Yanwath, Penrith, CA10 2HH

- The application is made under the Town and Country Planning Act 1990, sections 192, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Lowther Estate Trust for a full award of costs against Westmorland and Furness Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
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Decision

1. The application for an award of costs is allowed in part.

The submissions for Lowther Estate Trust

2. The costs application was submitted in writing. The following points were made.
3. The Council unreasonably failed to determine the LDC application within the statutory 8-week period or to explain the delay or to warn that it would be unable to determine it on time. It only requested an extension of time four minutes before the end of the day that the decision was due. The explanation concerning caseloads and the complexity of the case was an inadequate justification.
4. The Council wrongly assessed the LDC application in its “indicative” report and failed to apply the correct tests. It wrongly treating the application as under Class Q (ie Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO)). It failed properly to assess the submitted drawings and survey, was selective in its treatment of the information, and inaccurately described the building.
5. The Council failed to decide similar applications consistently, for example in a recent approval under Class Q which (by reference to photographs provided for this costs application) showed that that building was markedly less substantial yet was still approved for conversion in September 2023.
6. Thus, the Council unreasonably delayed development that could otherwise have gone ahead and the delay has cost the appellant time and money through the cost of the appeal, which (had it been decided timeously) would have created four new houses during a national housing shortage.

The response by the Council

7. No response was made by the Council.

Reasons

8. Parties in planning appeals normally meet their own expenses although costs do not, as a rule, follow the result. 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. “Unreasonably” is to be understood in its ordinary meaning.
9. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority.
10. Potentially relevant examples, although not an exhaustive list, would be delaying or refusing a certificate where the development would clearly be permitted development; not determining similar cases in a consistent manner; refusing to enter into discussions when a more helpful approach would probably have resulted in the appeal being avoided or the issues being narrowed, thus reducing the expense of the appeal. Unreasonable procedural behaviour may include failure to meet deadlines and unreasonable substantive behaviour may include running points with no legal basis or substantive points with no evidence.
11. The unreasonable behaviour must have directly caused unnecessary or wasted expense. An applicant for costs will need to clearly demonstrate how the unreasonable behaviour resulted in unnecessary or wasted expense.
12. In this appeal the only central question for decision was whether the proposed development would indeed be lawful by reason of its being permitted development under Class Q of the relevant part of the permitted development legislation. Thus, it is a circuitous argument for the applicant to say (as it also said in the appeal itself) that the Council misapplied the test(s) under Class Q and failed to focus on whether on the balance of probability the proposal was lawful development. Understandably the Council gave prominence to the central question of compliance with the criteria set out in Class Q, as well as the over-arching test, confirmed in case law discussed by both parties, of whether the proposal was a conversion or a rebuild, before deciding on the balance of probability whether it was well-founded.
13. The applicant brought no information in the appeal, other than its case on Class Q, to suggest that its proposal would otherwise be lawful, recognising correctly also, that the prior approval decision gave no comfort that the development the subject of that appeal, could be carried out without complying with the limitations and conditions inherent in the said Class.
14. Decisions on applications under Class Q vary according to the factual circumstances of the case, as the applicant accepted in the appeal. There is no evidence that the Council acted inconsistently, given that the 2023 appeal decision cited by the applicant was apparently decided on its own facts. The Council properly understood the nature of the proposal in the present appeal.

15. Clearly, the Council should have acted sooner in making a decision on the prior approval applications. However, the decision on appeal was on the basis that its delay was deemed to be a refusal and that had the Council actually refused to grant the certificate, that refusal would have been well founded.
16. Therefore, an appeal would have been necessary in any event for the applicant to pursue its case in respect of the main issue of compliance with Class Q, with one exception. It was unreasonable for the Council to adopt a reason for refusal related to the dimensions of the proposed development without referring the matter back to the applicant. It should have read the supporting material carefully and realised that the proposal was not and was never designed to exceed the envelope of the existing building.
17. Instead, the Council adopted a spurious argument related exclusively to some of the drawings submitted without proper regard to the rest of the correspondence and without reference back to the applicant. In this respect I find that the Council acted unreasonably which caused unnecessary expense to the applicant in having to refute that reason for refusal, which it did successfully.
18. Otherwise, however, the delays caused by the Council's failure to determine the application, although unfortunate, did not on the evidence, result directly in unnecessary expense that could have been avoided by not having to appeal. The appeal was made on 27 November 2023 but there was no time limit for the appeal. The covering letter stated the appeal was made on the basis of non-determination without the benefit of a decision notice or an officer's report. If the applicant felt at a disadvantage at that point in time, there was no time limit to meet, unlike with s78 or s174 appeals.
19. That said, as pointed out in the appeal decision, the applicant was able to reply to the Council's appeal statement and have its original submission including the plans and survey considered. Although I have sympathy for the position that the applicant finds itself in, the decision to pursue the appeal on the basis of permitted development rather than an application for planning permission, was its decision.
20. Finally, with reference to the point about the national shortage of housing, this is a planning merits-based argument that would have been irrelevant in the appeal itself, just as it is here. That said, I should perhaps point out that in *Hibbitt*¹ the policy guidance concerning the balance to be struck between increasing the housing stock and avoiding rural developments, was said to be a reason to avoid a wide interpretation of Class Q.
21. The court agreed that the process was a "fast track" system for genuine conversion of agricultural buildings and if extensive rebuilding was required, that was a case for full planning permission. It is of course regrettable that the delays took place but that is not itself a reason to interpret or apply the relevant criteria differently (such as for example having especial regard to the national shortage of housing) from that set out in the GPDO and relevant case law.
22. I find that the actions of the Council were unreasonable insofar only as it based its decision on unsubstantiated reasoning that the works proposed were beyond the

¹ *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)

external dimensions of the existing building pursuant to Class Q.1(h) of Part 3 of Schedule 2 to the GPDO, causing unnecessary expense in the appeal process.

Costs Order

23. In exercise of the powers under sections 195, 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Westmorland and Furness Council shall pay to Lowther Estate Trust, the costs of the appeal proceedings limited to those necessary to deal with the Council's reason for refusal pertaining to the dimensions of the proposed development.
24. The applicant is now invited to submit to Westmorland and Furness 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Grahame J Kean

INSPECTOR