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## Costs Decision

Hearing held on 25 November 2025

Site visit made on 25 November 2025

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 January 2026**

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**Costs application in relation to Appeals Refs: APP/L3815/C/25/3369025, APP/L3815/C/25/3369026**

**Land south of Hook Lane, Bosham, West Sussex, PO18 8EX**

- 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 Mr John Wells and Mrs Susie Wells for a full award of costs against Chichester District Council.
  - The appeal was against an enforcement notice alleging the construction of concrete pads.
  - The costs application, the Council's response and the applicants' final response were submitted in writing to an agreed timetable.
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### DECISION

1. The application for an award of costs is refused.

### 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' claim is based on matters arising in the ground (c) appeal, the ground (a) appeal and inconsistency in the Council's position.

### Ground (c) appeals

4. The behaviour identified by the appellants as unreasonable primarily relates to the date of determination. The appellants say the Council did not make a determination on the application regarding prior approval within 28 days as required.
5. The PPG states local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. One of the examples is acting contrary to, or not following, well-established case law.
6. The Court of Appeal judgement *Murrell v Secretary of State for Communities and Local Government* [2010] EWCA Civ 1367 was cited by the appellants to support their case. In considering the merits of the appellants' case I have concluded the expiry date stated in one sentence of the *Murrell* judgement is not determinative, for the reasons given in the appeal decision.

7. The email of the Interested Parties dated 30 January 2025 did not notify the Council they had missed the 28 day deadline. The email certainly raised the matter but sought information of the date of receipt of the prior approval application. More to the point, the appellants were aware of the email in preparing their statement of case but did not raise the date issue to support their ground (c) appeal until the morning of the hearing. The appellants say even if they had introduced the issue earlier the Council still would not have accepted their argument and the unnecessary costs flow from the Council erroneous position. In the decisions on the appeals I have not accepted the appellants' case and my conclusions have supported the Council's position.
8. In decisions on subsequent applications the Council required prior approval and refused such approval. The Council has not agreed the development otherwise complies with the various requirements of Class A, Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. The reasons for issuing the enforcement notice also state the Council does not agree the proposed barn enjoys such rights.
9. Unreasonable behaviour has not been demonstrated in relation to the ground (c) appeal.

#### **Ground (a) appeal**

10. The enforcement notice is directed at the construction of concrete pads. The reasons for issuing the notice explain why in the Council's view enforcement action is justified.
11. The reasons do not include the phrase "a modest visual impact on the landscape." This phrase, quoted by the appellants, is found in the Council's statement of case (paragraph 7.15) and the full sentence states "The concrete pads have a modest visual impact upon the landscape in terms of the materials used." The paragraph then details the materials, stating the pads are not sunk deeply into the earth and are topped by large metal bolts. The reasoning in that paragraph accepts the development is not visible from any public area but is stark when viewed up close. For this reason the Council finds visual impact from the introduction of an urban form of development, which the Council says fails to comply with development plan policies. When read as a whole and in context the Council has not adopted the "indefensible position" regarding visual impact claimed by the appellants.
12. The reasons state "The concrete pads represent an unjustified addition to the Land for which there is no agricultural justification and introduce an urban form of development to a sensitive site which would serve no purpose." The appellants submitted the Council did not identify a relevant policy requiring a purpose for the concrete pads. However, Policy 2 of the Chichester Key Policies 2014-2029 is one of the policies listed in the reasons, a policy that restricted development in the countryside to that which requires a countryside location or meets an essential local rural need or supports rural diversification. A new Local Plan has been adopted since the notice was issued and at the hearing the Council identified Policy S2 as stating a similar requirement.
13. The reasons also cite paragraph 190 of the National Planning Policy Framework, which sets out policy for major development in the National Landscapes. This

obviously was an error and the relevant policy is in paragraph 189, as detailed in the Council's statement of case.

14. In conclusion, the appellants have not demonstrated the Council made vague, generalised or inaccurate assertions about the proposal's impact.
15. Not determining similar cases in a consistent manner is another PPG example of unreasonable behaviour with respect to the substance of the matter under appeal. The appellants identified four other occasions where they say the Council took an entirely different approach to determinations under Part 6 Class A Schedule 2 of the Order, for developments in the National Landscape and close to the European site<sup>1</sup>. The appellants suggested the Council was pressurised by local residents into taking enforcement action.
16. However, the current appeal is not against the decision on the PNO application but is against the enforcement notice. The expediency of taking enforcement action is not a matter for debate in the current appeals.
17. On the same theme of consistency, the appellants drew attention to the conclusions reached by planning officers that the visual and landscape effects of the proposed barn would be acceptable. However, the determining consideration is the decision by the Council as local planning authority, not officers, and to date no planning permission has been granted by the Council for the proposed barn. An enforcement case that has been closed may be reopened and as stated above, expediency of taking action is not within my remit.
18. The appellants drew a comparison between larger complete barns the Council found acceptable and the action against the concrete pads intended to form the base for a smaller barn and which cannot be seen. The timing of the issue of an enforcement notice is for the Council to decide. The reasons for issuing the notice set out clearly the context and the Council's considered objections to the development. The Council's appeal statement expands on why in their opinion the development is not of a high design quality.
19. Furthermore, to raise the Council's request for a planning obligation is not a relevant matter in respect of the ground (a) appeal and this costs application. According to the appellants' statement of case (paragraph 4.17) the use of a unilateral undertaking in conjunction with the submission of a new Part 6 PNO application was suggested by the Council in June 2024 as a potential way forward in relation to protection of the European site. There is no evidence a unilateral undertaking was suggested by the Council in respect of the ground (a) appeal.
20. In conclusion, unreasonable behaviour has not been demonstrated in relation to the ground (a) appeal and other related matters.

## **Conclusion**

21. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*Diane Lewis*

Inspector

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<sup>1</sup> Appellants appeal statement paragraphs 4.87 to 4.97