



Costs Decision

Site visit made on 16 December 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2026

Appeal Ref: APP/X1165/W/25/3375118

Singleton Gardens Meadfoot Sea Road, TORQUAY, TQ1 2LQ

- 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 Ray Bishop of OJ Developments Limited for a full award of costs against Torbay Council.
 - The appeal was against the failure of the Council to validate and determine issue a notice of their decision within the prescribed period on an application for planning permission for "*Variation of Conditions relating to application P/2023/0994: Extensions and alterations to the existing dwelling including demolition of existing extensions, formation of two storey and single storey extensions, roof alterations and replacement fenestration. Demolition of greenhouse and outbuildings, landscaping and associated works. Conditions: P1 – Approved Plans, 03 – Tree Protection Measures, Variation sought: Alterations to demolition areas and amendments to wall positioning which may impact tree protection matters*".
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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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. In summary, the appellant contends that the Council's behaviour in not validating the application and not determining the application is unreasonable behaviour and that given the nature of the amendments being sought the Council should have granted permission for the development.
5. As I have set out in the main decision the courts have established that where a local planning authority has failed to validate an application for planning permission, an applicant can appeal to have the issue of validity resolved by the Secretary of State.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

6. Furthermore, it has been established that an invalid planning application cannot be the foundation for any jurisdiction in an appeal. An Inspector can only consider the merits of an application and determine the appeal if they are satisfied that a valid planning application has been made. Whether the local planning authority has validated the application and issued a decision letter is not determinative and the Inspector must consider and reach a view on validity themselves. If the Inspector determines that an application is invalid, the Secretary of State has no jurisdiction to determine any appeal and it must be turned away as invalid.
7. Planning permission reference P/2023/0994 was granted for *“Extensions and alterations to the existing dwelling including demolition of existing extensions, formation of two storey and single storey extensions, roof alterations and replacement fenestration. Demolition of greenhouse and outbuilding, landscaping and associated works”*. As I have concluded in the main decision, the works the subject of the enforcement notice have occurred as a matter of fact and are unlawful demolition of the original dwelling rather than the extension and alterations the subject of planning permission. Consequently, given that the planning permission does not authorise the demolition to the extent that it has taken place and the extensions and alterations to that no-longer surviving building cannot take place as a matter of fact, the planning permission does not itself survive and is not implementable.
8. It is unlawful to attempt to secure a variation to a condition that is inconsistent with the operative part of a planning permission. That being the case it is not possible for the latest proposal under reference P/2025/0365 to be validated because the original permission no longer exists.
9. As such I have found that the Council’s reasons for failing to validate planning application reference P/2025/0365 is justified and entirely correct in accordance with established case law and legislation justified.

Conclusion

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

A A Phillips

INSPECTOR