

Costs Decision

Inquiry held on 22 January 2026 and 2 February 2026

Site visit made on 21 January 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 February 2026

**Costs application in relation to Appeal Ref: APP/L3815/X/25/3371035
Land south of 2 Churchlands Cottage, Village Road, Kirdford, West Sussex
RH14 0LU**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made Mr & Mrs Nik and Sylvia Tobutt for a full award of costs against Chichester District Council.
 - The application for costs is in connection with appeals against the refusal of an application for a Certificate of Lawful Use or Development for use of 2 no. permanent structures for residential use, with alterations undertaken to one of the structures.
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Decision: the application is refused

The case for the applicant

1. Chichester District Council received the application for a Certificate of Lawful Use or Development on 13 March 2025 and declared it valid on 30 April 2025. Following the validation of the application, there was a long delay in the Case Officer attending a site visit. The Case Officer visited the site on 13 June 2025 without prior notification. As such, the site visit was unaccompanied by the agent acting for the appellants, but the Case Officer was met by one of the appellants. The appellants offered to provide any information as to what may be relevant, but the officer stated they were only there to take photos.
2. The delegated report and recommendation of decision were issued to the case officer's line manager on 20 June 2025, with the decision notice being issued on the 24 June 2025. The case officer did not contact the appellants or their agent at any time during the application process for clarification, to request additional evidence, to provide advance notice of the site visit, or to notify them of the recommendation for refusal. The appellants accept that there is no legal requirement for any sort of communication or engagement by the case officer but believe the lack of communication/engagement undermines the requirements set out in the National Planning Policy Framework (Framework) for working proactively with applicants. Additionally, the agent had to chase for the delegated report as it was not made available until it had been requested the day after the decision notice was published.
3. This behaviour continued in the appeal where the Council was required to provide copies of the appeal questionnaire by the 10 September 2025, but it was not received until the 30 September following yet another chaser enquiry.

4. The delegated report accepts that the proposal buildings have been there the required number of years to gain immunity from planning enforcement; but a split decision was not offered and could not have been requested by the appellant due to the lack of communication about the intended refusal. The case officer relied on false assumptions in the delegated report which had no evidence to corroborate them. The decision notice, delegated report, nor appeal statement submitted by the Council does not offer any reason as to why they refused the part of the application which relates to the operational development of Building 2 and why a split decision was not offered. The Council therefore failed to substantiate a reason for refusing the Certificate of Lawful Use or Development for the building operations related to Building 2, with the conclusion in their delegated report merely focussing on the use.
5. The appellant notes that the Council believe that they have evidence which contradicts the appellant's submitted evidence. The Planning Policy Guidance (PPG) states that:

"If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence."

6. The wording in this sentence specifies that they need to share the evidence, a noticeable change in comparison to the previous sentence in the same paragraph which states that a local authority is entitled to canvas for evidence if it so wishes. No evidence was shared by the Council before a decision was made. The appellants and their agent were made aware of the Council's assumptions (e.g. reliance on the main dwelling and the frequency of use) when they received the delegated report.
7. The appellants understand that the Council as has a statutory duty to determine applications within 8 weeks from receipt, but reviewing the evidence in week 7 did not appear to leave them sufficient time to carry out the procedural requirements set out above for providing evidence to the applicants and giving them the opportunity to comment and/or offer counter evidence. Additionally, this would have provided the chance of suggesting a split decision between building operations and change of use.
8. Overall, the appellants believe that the process was either incorrectly followed or rushed through without fair consideration and that if the Council had engaged with the applicant in a timelier and more cooperative manner an appeal would not have been necessary and the associated costs would not have been incurred. Furthermore, the appellants believe that throughout this whole process, the Council have given the impression that it was more important to meet the statutory deadline of 8 weeks than to engage with them in a meaningful way

The response of Chichester District Council

9. In response to the appellant's claim, the Council contends that there is no evidence demonstrate this the process of determining this application was either incorrectly followed or rushed through without fair consideration. The application as submitted by the appellants was fully considered by the Council and, and on the basis of the evidence submitted by the appellants along with that available to the Council, it was determined in a timely manner. This does not constitute unreasonable behaviour by the Council.

10. A site visit was undertaken as part of the assessment of the application and the Council fully assessed the evidence provided by the appellants. It is considered that the process of determining the application has been correctly followed, fair consideration has been given, and the Council has not behaved unreasonably in refusing the application. A difference of opinion does not constitute unreasonable behaviour.
11. The application has been determined within the expected time frame. It is not unreasonable behaviour to determine the application as submitted by the appellants in a timely manner and is simply a reflection of the statutory duty placed on local planning authorities to determine Certificates of Lawful Use or Development within eight weeks.
12. The costs application made by the appellants is critical of the Council for not requesting additional evidence from the appellants during the course of the application. Determining the application on the description and evidence submitted by the appellants is not unreasonable behaviour. Paragraph 5 of the PPG states:

"without sufficient or precise information, a local planning authority may be justified in refusing a certificate"
13. The PPG goes on to state that:

"The applicant is responsible for providing sufficient information to support an application"
14. In their Appeal Statement the appellants advise that *"the evidence provided was chosen due to severe medical constraints that the Appellants were experiencing at the time of submission"*. It is noted that Council has not solicited the application, and the application has not been as a result of an enforcement notice. The timing of the application has been chosen by the appellant. The onus is on the appellant to make their own case and to provide sufficiently precise and clear evidence in support of their application.
15. In addition to the above, even if the Council had requested additional information during the course of the application it is not considered that this would have changed the outcome of the application, as even at appeal stage very limited information has been provided by the appellants, and has not overcome the Council's refusal.
16. It is acknowledged that the delegated report was not uploaded to the application file at the same time as the decision notice was issued. However, this was addressed promptly, within hours of this being raised, and the day after the decision was issued. It is contended that this did not amount to unreasonable behaviour and also would not have any costs implications.
17. In conclusion, the Council strongly contends that it has acted in a fair and balanced manner and that the appellant's submission does not demonstrate that the LPA has acted 4 reasonably. Instead, the LPA has determined the application as submitted by the appellants in a timely manner. The Council has not behaved unreasonably in relation to procedural matters. Nor has it behaved unreasonably with respect to the substance of the matter under appeal.
18. For these reasons, the application for costs should be refused.

Reasons

19. The PPG 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 PPG 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 PPG provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These examples include refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
20. In relation to Certificates of Lawful Use or Development (LDC), the PPG is very clear in stating that applications for a LDC must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. The PPG goes on to explain that an application needs to describe precisely what is being applied for and that precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date. The PPG indicates that without sufficient or precise information, a local planning authority may be justified in refusing a certificate. The PPG is again very clear that it is the applicant who is responsible for providing sufficient information to support an application and states in terms that in lawful development certificate appeals, the onus of proof on matters of fact is on the appellant.
21. I note that the appellant's quote extensively from the PPG in their Statement of Case and in their application for costs, including some of the passages that I have quoted above. It is therefore evident that the appellants are fully aware of the requirements set out in the PPG insofar as they relate to LDCs.
22. The starting point must be the application for the LDC as initially submitted to the Council. In this case, the evidence submitted with the application as initially submitted to the Council fell a long way of short of meeting the requirements set out in the PPG insofar as it was not accompanied by sufficient factual information/evidence for a LDC to be granted. As such, the application as initially submitted had no reasonable prospect of success and the refusal of the Council to grant a LDC was both well-founded and entirely justified on the basis of the evidence as originally submitted. The actions and behaviour of the Council thereafter must be viewed in that context.
23. The PPG states without sufficient or precise information, a local planning authority may be justified in refusing a certificate. On the basis of the imprecise and limited information submitted with the initial application, the Council was perfectly entitled to summarily refuse the application. There is no legal requirement for any sort of communication or engagement by the Council before determining an application.
24. The appellants criticise the Council for not sharing evidence before a decision was made. Consistent with the lack of precision within the appellant's main evidence, the appellants do not specify what evidence they consider should have been shared with them before the decision was issued. Apart from

noting that there is no separate Council Tax account or a separate postal address for any of the buildings (both matters of fact already known to the appellants), there is no evidence referred to in the delegated report that was not provided by the appellants themselves. There was significant evidence relied upon by the Council at appeal stage in terms of the use of Building 2 as holiday accommodation, but that evidence was already known to the appellants and should properly have been disclosed by them as part of the application for the LDC. I therefore consider that the appellants criticism in this respect is entirely without justification.

25. I recognise that in some circumstances a lack of communication/engagement can undermine the requirements set out in the Framework in terms of working proactively with applicants. I am also fully aware of the status afforded to the PPG as a matter of law, and the requirements set out there in relating to the need for evidence obtained by the Council to be shared with the applicant. However, this guidance needs to be considered on a case-by-case basis and having regarded to the facts.
26. In this case, as initially submitted, the application was so far removed from the level of precision required in the PPG that the Council was fully justified in not engaging with the applicant. This was not a situation where only some minor matters of clarification were necessary to satisfy the Council that the use for which the LDC was sought was lawful on the date the application was made. Neither was it the situation envisaged in the PPG where a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
27. The same applies to the operational development of Building 2. The applicant criticises the Council for not offering a split decision but, on the information submitted with initial application, the Council was never in a position to do that. Put simply, the information provided with the application was not sufficient in terms of detail and precision to enable the Council to reach an informed decision that the operational development was lawful through the passage of time. There was no supporting documentation in terms of dated invoices were submitted for materials used or statements/testimonies from the contractors who carried out the works. Indeed, the operational works themselves were not properly described and/or documented in the application.
28. On the basis of the evidence provided with the initial application, I fail to see how the Council could have properly granted the LDC on the balance of probability. It is abundantly clear to me that this was the test that the Council was employing but the evidence simply does not support the reaching of such a conclusion. It follows that the Council was never in a position to offer a split decision. It is no coincidence that I reached exactly the same conclusion on the same evidence.
29. The appellant asserts that the Council's delegated report accepts that the proposal buildings have been there the required number of years to gain immunity from planning enforcement. I find nothing to support that assertion. On my reading, the delegated report records that the initial construction of Building 2 was completed in 2010, with further works completed throughout 2017 and 2018. The delegated report goes on to

confirm the existence of Building 2 in 2013 (it not being present in 2007) and that it has been used by family members since August 2020. That is a very long way short from confirming that Building 2 as it currently stands is lawful. Indeed, nowhere does the delegated report state in terms that Building 2 is lawful.

30. I recognise that the Council may be fairly criticised for some aspects of its handling of the case. For example, the delay in the Case Officer attending a site visit and that when the site visit did eventually take place on 13 June 2025 it did so without prior notification. Similarly, the delay in uploading the delegated report, albeit that error was addressed promptly. However, whilst these were both failings on the part of the Council, they did not amount to unreasonable behaviour in the terms set out in the PPG. The Council's failure to submit the appeal questionnaire in accordance with the appeal timetable could be regarded as constituting unreasonable behaviour in the terms of the PPG, but the delay caused was slight and the appellants did not incur any significant unnecessary or wasted expense as a result.
31. There is one further observation that feel compelled to make. It seems to me that the appellant's entire approach to this case was directed more at securing costs against the Council than demonstrating that the use was lawful on the date that the application was made. In addition to the written application for costs that was made, the appellant's opening statement to the Inquiry and their closing submissions were largely tailored to the Council's motives/behaviour during the course of the application and appeal. Furthermore, the questioning of the Council's witnesses at the Inquiry itself was in no small part directed at matters pertaining to the appellant's application for costs rather than testing the evidence presented. If that was the appellant's intention, then it did not serve them well.
32. The PPG is very clear: 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. In this case, I find that the Council has not acted unreasonably, such that one of the requirements for an award of costs is not present. The issues of concern to the appellant all arose from the inescapable fact that the application as submitted to the Council was fundamentally lacking in the detail and precision required by the PPG. I therefore conclude that an award of courts of costs against the Council is not justified.

Paul Freer
INSPECTOR