

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 by Chichester District Council for a partial award of costs against Mr & Mrs Nik and Sylvia Tobutt.
 - 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 granted and an award for costs is made in the terms set out in the Costs Order below

The case for the applicant

1. The essence of the Council's case is that it has been put to unnecessary or wasted expense due to the unreasonable behaviour of the appellants in continuing to pursue a weak case and failing to provide adequate evidence for the Inspector to discharge their inquisitorial duty on the appellant's written evidence. The Council's view is that given the weaknesses in the appellants case an Inquiry has been deemed necessary to make up for the deficiencies in their case.
2. The Council points out that it approached the Planning Inspectorate regarding the procedure for the appeal on 29 September 2025, expressing the view that an Inquiry was not necessary in this case. In response, the Planning Inspectorate commented that "*...the evidence presented with the appeal was limited and consequently the Inspector wishes to wait until Statements of Case are received before reviewing the procedure*".
3. The procedure to be followed was discussed at a Case Management Conference (CMC) held on 27 October 2025. The Inspector set out that the burden of proof in an LDC appeal is on the appellant and that the inquisitorial duty of an Inspector can be discharged on written evidence alone if the evidence is adequate. General guidance, avoiding the specific merits of this appeal case, was given by the Inspector on how written evidence could be adequate to discharge this duty.
4. At the time of the CMC, the appellants' Statement of Case had not been received. The CMC note set out that the appeal procedure should continue as an Inquiry for now but that the Inspector would review the procedure following

the receipt of the appellants' Statement of Case and again following the exchange of Proofs of Evidence.

5. On 5 November 2025 the Planning Inspectorate contacted the parties, indicating that: *"Following the submission of the Appellants statement, the Inspector has reviewed the procedure and considers that an Inquiry is required."* The Council considers that the conclusion of the Inspector that an Inquiry was still required supports its view that the written evidence is still inadequate and that an Inquiry was deemed necessary to make up for deficiencies in the appellants' case.
6. The Council contends that the unreasonable behaviour of continuing to pursue an appeal without adequate evidence, despite being provided the opportunity to provide adequate evidence to avoid an Inquiry, has resulted in unnecessary expense being incurred through officer time, legal expenses, and the cost of hosting the Inquiry. It is also relevant that the Council has found evidence that Building 2 has been in use as a holiday let. The Council would have expected the appellant to draw attention to this in their case and considers the failure to do so to be unreasonable behaviour given the importance of this information in the consideration of the case. The Council further contends that a partial award of costs should be granted reflecting the costs associated with an Inquiry, noting that some costs would have been incurred in defending an appeal determined by the written representation procedure. For these reasons it is respectfully requested that the costs application is allowed.

The response of Mr & Mrs Nik and Sylvia Tobutt

7. The appellants were advised of the Council's application for costs in a letter from the Planning Inspectorate dated 7 January 2026, which enclosed a copy of that application. No response was made to that letter. Furthermore, beyond challenging whether the Council's assertion that both the adherence to the 8-weeks and the employment of Counsel were in the interests of ensuring public funds are wisely spent, neither did the appellants avail themselves of the opportunity to rebut the Council's application for costs as part of their Closing Submissions to the Inquiry on 2 February 2026. It follows that the appellants have made no substantive response to the Council's application for costs.

Reasons

8. The Planning Practice Guidance (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 only supplying relevant information at appeal when it was requested, but not provided, at application stage and deliberately concealing relevant evidence at planning application stage or at a subsequent appeal. The PPG also states in terms that in lawful development certificate appeals, the onus of proof on matters of fact is on the appellant.
9. 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.

10. I note that the appellant's quote extensively from the PPG in their Statement of Case, 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 the LDC.
11. 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 submitted had no reasonable prospect of success and the refusal of the Council to grant a LDC was entirely justified.
12. This starts with the description of the development for which the LDC was sought. The description provided on the application form was:

Two permanent structures in residential use without benefitting from planning approval for a change of use. One structure has building operations to facilitate the change of use, also without planning approval. See planning statement for additional details.
13. My site visit immediately confirmed that this description was neither accurate nor sufficiently precise. It was evident from the written evidence, and confirmed at the site visit, that Building 2 was subdivided into three separate 'units', each of which contained all the facilities required for day-to-day domestic existence. As a matter of principle, it would not have been possible for the Council to have granted a LDC based on that description. It lacks the precision deemed essential in the PPG.
14. The location plan submitted with the application shows two structures enclosed with the red line that identifies the application site. Those structures are not identified in any way, such that it is not possible to determine from that plan which of those structures has been the subject of building operations to facilitate the change of use.
15. Only by turning to the Planning Statement dated 24 February 2025 is it possible to understand that the two structures are known as Building 1 and Building 2 respectively, and that is Building 2 that has been the subject of building operations to facilitate the change of use. But that is as far as the Planning Statement goes: there is no description of the works that took place and no drawing that shows those works.
16. The Statutory Declaration of Mr Nicholas Alexander Tobutt and Mrs Sylvia Joan Cole Tobutt dated 3 March 2025 states that the building operations for Building 2 were initially completed in 2010 while further works were substantially completed throughout 2017 and 2018. Yet nowhere in the Statutory

Declaration does it explain what those building operations were and/or what those 'further works' comprised.

17. The only drawing of Building 2 submitted with the application is drawing No. PHA-PL-005 titled 'EXISTING PLANS', which shows that layout once the building operations had been completed. There is no comparative 'before & after' drawing to assist the Council in determining what building operations had been undertaken and/or the scale of those building operations. It therefore would not have been possible for the Council on receipt of the application to determine what were the building operations that facilitated change of use.
18. Just as important from the perspective of the appellant's case, no evidence was provided to corroborate the statement in the Statutory Declaration. No dated invoices were submitted for materials used and no statements/testimonies were submitted from the contractors who carried out the works. There was one aerial photograph attached to the Statutory Declaration that shows Building 2 prior to the works being carried out but that aerial photograph is not dated. It is therefore of no evidential value whatsoever. No dated photographs showing the building operations in progress were submitted with the application and similarly no dated photographs of the completed building operations were submitted.
19. Without that corroborating evidence, the Council was perfectly entitled not to rely solely on the evidence in the Statutory Declarations. That is not to say that the evidence contained within the Statutory Declarations is deliberately false or misleading. It only reflects the fact that human memory is notoriously fallible and therefore unreliable, particularly when it comes to the precise dates of events that took place several years ago. Hence the importance of documentary and/or photographic evidence to corroborate the evidence contained within the Statutory Declarations.
20. Furthermore, with Statutory Declarations it is sometimes the information that is omitted (inadvertently or otherwise) that is more important than the evidence contained within it. In this case, the evidence relating to the pattern/frequency of use of Building 1 and the use of Building 2 as holiday accommodation were both pivotal to my Decision. Neither were mentioned in the Statutory Declaration of Mr Nicholas Alexander Tobutt and Mrs Sylvia Joan Cole Tobutt dated 3 March 2025, despite both signatories clearly being aware of that information.
21. It follows that if the appeal had proceeded under the Written Representations, that evidence would not have emerged¹. It further follows that if I had then relied solely or primarily on the Statutory Declaration of Mr Nicholas Alexander Tobutt and Mrs Sylvia Joan Cole Tobutt as originally drafted and afforded that evidence the weight due to a Statutory Declaration, my Decision would have been informed by incomplete information and would not have been well founded.
22. As a whole, the evidence that was submitted with the original application lacked the precision advocated in the PPG. To just give one example, the Statutory Declaration of Mr Nicholas Alexander Tobutt and Mrs Sylvia Joan Cole Tobutt dated 3 March 2025 states that "Building 1 has been used as a dwelling

¹ At least in terms of the pattern and frequency of the use of Building 1.

- by Mr Nicholas Alexander Tobutt since prior to 2014 for the purpose of being close to and managing any young and sick animals kept at Churchlands”.
23. That statement alone raises more questions than it answers. For example, how frequently was Building 1 occupied as a dwelling? Was that use continuous or occasional? If not continuous, by how long were the occasional periods of occupation separated? What is/was Building 1 used for when not occupied? What constitutes a young or sick animal for that purpose? Is “Churchlands” the same as the land south of 2, Churchlands Cottages cited on the application form, or is it another property nearby? That fundamental lack of precision is the very antithesis of the approach advocated in the PPG.
24. That information was necessary for the Council first, and later myself, to apply the principles established by the courts in the well-known judgments of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 as applied in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, which collectively set out the approach adopted by the courts to the issue of continuous use of a building or land. Without that information, neither the Council nor I could have reached an informed decision when assessed against the relevant case law. It was also one of the reasons why a Public Inquiry was necessary to fully understand that evidence by asking questions to fill in the many gaps in the statement contained in the Statutory Declaration.
25. One of the core values that underpins all the work of the Planning Inspectorate is that of fairness. In reviewing the procedure for this appeal to follow, I was always acutely aware of the deficiencies in the appellant’s evidence in terms of the lack of detail and precision. Nevertheless, there were elements of that evidence that suggested that the use for which a LDC was sought could potentially be lawful, principally the Statutory Declarations. In the interest of fairness, it was therefore incumbent upon me to provide the appellants with the opportunity to adduce additional evidence to support that submitted with the original application and to fill in the many gaps in their evidence. I considered the optimum procedure to achieve that would be if the evidence was tested through cross-examination, which necessitated that a Public Inquiry be held.
26. However, once the Inquiry opened it did not take long for the weakness of the appellant’s case to be fully exposed. In terms of the example referred to above, it took no more than few minutes of gentle questioning by the Council’s advocate for Mr Tobutt to reveal that the use of Building 1 as a ‘dwelling’ was for no more than 90 to 100 days in any one calendar year. Setting aside for present purposes whether Building 1 was ever a dwelling as a matter of fact and degree, for the reasons that I set out in my main Decision that single piece of evidence completely undermined the appellant’s case that the use of Building 1 as a dwelling was lawful.
27. That was particularly disappointing insofar as I set out in the Agenda for the CMC the relevant case law against which I would assess the evidence in due course. This included the well-known judgements in *Thurrock* as applied in *Swale*, to which I deliberately drew the parties’ attention because they collectively set out the approach adopted by the courts to the issue of continuous use of a building or land. I knew from reading the initial documents submitted with the appeal that this was likely to be a key factor in the determination of this appeal, and this turned out to be the case at the Inquiry.

28. Having alerted the parties to the importance that I intended to attach to those two judgements in this case, my expectation was that the appellants would have reviewed their case in the light of that case law. Had they done so, my expectation then was that at least some attempt would have been made to explain how the use of Building 1 was in accordance with the principles held by the courts in terms of continuous occupation of land and buildings. But no such attempt was made.
29. In particular, the judgement in *Thurrock* is very clear as to what constitutes a continuous use. On any plain reading of *Thurrock*, Mr Tobutt's use of Building 1 could not possibly have been considered to be continuous. However, the appellants made no attempt to rationalise that use against the relevant case law, as I fully expected them to do having specifically drawn it to their attention. Had they done so, the only reasonable conclusion that they could have reached is that the use of Building 1 was not continuous in the terms set out in *Thurrock* and *Swale*. Having reached that conclusion, the only reasonable courses of action would then have been to either remove the use of Building 1 from the LDC applied for or withdraw the appeal altogether, on the grounds that it had no reasonable prospect of succeeding.
30. It was a similar story with Building 2. It transpired that following the submission of the appeal, the Council discovered that Building 2 had in fact been used in part as holiday accommodation. The Council provided detailed evidence to support that assertion in the form of screenshots from booking websites. The appellants conceded in cross-examination at the Inquiry that this use has taken place and gave a detailed account of that use.
31. The salient point is that this was a material consideration of some significance in this case: put simply, the claimed use as a dwelling could not have been taken place continuously throughout the relevant period as per *Thurrock* and *Swale* if it was being used (in part at least) as holiday accommodation. The appellants were obviously aware that the use as holiday accommodation had taken place. However, their written evidence (including their Statutory Declaration) is entirely silent on the point.
32. I am prepared to give the appellants the benefit of the doubt and accept that this important evidence was not deliberately concealed in the terms set out PPG. Nevertheless, the appellants were professionally represented throughout the application and appeal processes. It should have been apparent that this material consideration was highly relevant to the application and the appeal, even if the full significance of that material consideration had not been appreciated. The appellants themselves should have disclosed this information as part of the LDC application, and definitely as part of their evidence to the Inquiry. In any event, this is another example of the lack of detail and/or precision that pervades the appellant's case.
33. It follows that had the evidence referred to above formed part of the information supporting the original application or the initial appeal documents (as it should have done) I would not have considered the Inquiry procedure to be necessary. I could then have determined the appeal on the papers alone under the Written Representations procedure, possibly even without a site visit being necessary. Had the appellants done so, it is more likely than not the appeal would have been dismissed or an invitation made to withdraw the

- appeal. But that was the outcome in any event, and that point could have been reached much sooner and without incurring the expense of a Public Inquiry.
34. I am fully aware that the appellants did not seek a Public Inquiry and wished for the appeal to proceed under the Written Representations procedure. However, the corollary of the above is that the Inquiry could have been avoided entirely if the appellants' evidence met the requirements of the PPG in terms of precision and detail. I gave the appellants every opportunity to provide that detailed evidence, to the extent of setting out in the Agenda to the CMC the relevant case law against which I would assess the evidence. In so doing, I was acutely aware that there was an element of 'inequality of arms' here insofar as the appellants were not in a position to instruct Counsel to represent them. Accordingly, I sought to assist them as far as I was able by setting out the relevant case law.
35. In the event, the appellants manifestly failed to avail themselves of that opportunity. This remained the position right up to the submission of Proofs of Evidence: even at that late stage I could have, and would have, changed the procedure to that of Written Representations if the appellants' evidence had been more detailed and/or had framed their case having regard to the case law that I indicated at the CMC.
36. The appellants place much reliance on the principle set out in *Gabbitts v SSE & Newham BC* [1985] JPL 630. However, this is not a situation where the local planning authority has no evidence of its own to contradict that of the appellants or make their version of events less than probable: for example, the use of Building 2 as holiday accommodation. On the contrary, I find that the appellants' evidence is not sufficiently precise to counter the documentary evidence produced by the Council. In other areas, such as the use of Building 1, the appellants' evidence (as initially submitted) was simply not sufficiently precise on its own to demonstrate the lawfulness of the use.
37. In short, it was the failure of the appellants to provide evidence of sufficient detail and precision that dictated that the appeal had to proceed by means of an Inquiry. The appellants had numerous opportunities to rectify that but manifestly failed to do so. The failure to do so is all the more remarkable given that the appellants were clearly aware of the guidance in the PPG from the very outset. The PPG is very clear that it is the applicant who is responsible for providing sufficient information to support an application. That responsibility carries over to the submission of evidence at appeal. In my view, the failure of the appellants to accord with the guidance in the PPG constitutes unreasonable behaviour in the context of an award of costs.
38. It follows that the Council incurred wasted and unnecessary expense in preparing for and attending an Inquiry that should never have been necessary and would not have taken place had the appellants followed the guidance set out in the PPG. In that context, I must briefly respond to the appellants' assertion that the employment of Counsel was not in the interests of ensuring public funds are wisely spent. Firstly, it is entirely a matter for the Council how it spends public funds. Secondly, the presence of Counsel at the Inquiry greatly assisted me in discharging the inquisitorial burden that is upon me, not least by asking clear and structured questions to test the evidence as well as by making a specific legal submission at my request. I therefore make

absolutely no criticism of the Council for instructing Counsel to represent it at the Inquiry.

39. 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. This is a situation where the Council has incurred wasted and unnecessary expense as a result of the unreasonable behaviour of the appellants. Both elements necessary for an award of costs are therefore present, such that an award of costs in favour of the Council is justified. That is not a decision that I reach lightly. However, the appellants' blatant disregard for the guidance in the PPG and of the case law to which I specifically drew to their attention compels me to reach that conclusion.

Costs Order

40. 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 Mr & Mrs Nik and Sylvia Tobutt shall pay to Chichester District Council the partial costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred by the Council in preparing for and attending the Inquiry held on 22 January 2026, including the submission of Proofs of Evidence, attendance at the CMC held on 27 October 2025 and Closing Submissions held on 2 February 2026, but excluding the Site Visit held on 21 January 2026 (which is likely to have been necessary anyway if the appeal had proceeded under the Written Representations procedure); such costs to be assessed in the Senior Courts Costs Office if not agreed. The Council is now invited to submit to Mr & Mrs Nik and Sylvia Tobutt, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Freer
INSPECTOR