



Costs Decisions

Site visit made on 30 September 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

Costs applications in relation to Appeal Ref: APP/E2001/C/25/3368103 Crab Apple House, Station Road, Foggathorpe, East Riding of Yorkshire YO8 6PS

- The applications are 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 applications are made by Mr Justin Claybourn for a full award of costs against East Riding of Yorkshire Council and by East Riding of Yorkshire Council for a partial award of costs against Mr Justin Claybourn.
 - The appeal was against an enforcement notice alleging construction of a two-storey detached outbuilding with associated steel staircase and platform and single storey timber pergola.
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Decisions

1. The applications are 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.

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3. The PPG advises, for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate. Local planning authorities are also at risk of an award of costs if they refuse 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.
4. The applicant suggests that the Council has failed to co-operate with them, in providing, through the Freedom of Information (FOI) procedure, requested details of the timing and nature of complaints, which ultimately gave rise to the enforcement notice. It is suggested that, had this information been provided, it may have enabled the appellant and local planning authority to agree, principally, the overall height of the garage, opportunities for reconfiguring the external stairs, the acceptability (either as permitted development or as an acceptable alternative to the approved fenestration) of windows introduced into the building which differ from the approved.
5. The applicant suggests that the Council has been asked to provide evidence to demonstrate the alleged difference in height between the approved and as-built

building through a Freedom of Information request for this information. I have been provided with an email, dated 12 March 2025, from the applicant to the Council, which formally requested all planning and enforcement related information in relation to references 20/01841/PLF and 24/00391/TREES, including access to any internal notes, memos, records of site visits, photographs, complaints received, emails and any record of telephone calls.

6. The Council replied, on 9 April 2025, under Environmental Information Regulations (EIR) – Request for Information, and stated that ‘The file for planning application 20/01841/PLF contains site photographs and emails between the case officer and planning agent. These are attached.’ The Council withheld the information requested in respect of 24/00391/TREES, as it considered it fell under the exception in Regulation 12(5)(b) of the Environmental Information Regulations 2004 which relates to the course of justice.
7. Firstly, I should point out that my consideration relates to unreasonable behaviour in respect of this appeal and not any failure to comply with the EIR or FOI requirements, which has its own appeal procedure, to the Information Commissioner’s Office. Secondly, the Council advise that investigation into the outbuilding were made under enforcement reference 21/01447/UWORK3. Even if the Council had provided information regarding the 24/00391/TREES investigation, it is not clear how this would have assisted with the appeal before me. While the applicant may have thought they were requesting evidence to demonstrate the alleged difference in height between the approved and as-built building, this is not what appears to have been requested.
8. As can be seen, I have found that the development constitutes a breach of planning control, that planning permission should not be granted for the outbuilding and associated stairs and platform and that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control. Had the applicant been provided with details of the complaints, including the timing and nature, it seems unlikely it would have prevented the appeal. Even if the Council was ‘incrementally advised of different works’ at the appeal site by local objectors, the Council has explained within its reasons for taking enforcement action, why it considered it expedient to take enforcement action and that it considered planning permission 20/01841/PLF has now lapsed, therefore leaving no fall-back position.
9. The applicant submitted two further applications in respect of the outbuilding, 23/00149/VAR and 24/00459/PLF, the first of which was refused on 2 October 2023 and the second was withdrawn on 20 May 2024. It appears, from the evidence, that there was a significant period between the appellant becoming aware of the Council’s concerns and the enforcement notice being issued.
10. My attention has been drawn to a prosecution brought by the Council in January 2025 against the applicant concerning the felling of a TPO tree in the garden of Crab Apple House and the content of a witness statement made by a planning enforcement officer. Details of works to the protected tree are given, as well as a comment that ‘the unauthorised building is around 2 metres taller than the approved garage and as a result was much closer to the tree canopy’. It is not clear how the officer came to the conclusion that the building was around 2 metres taller than the approved garage.

11. From the evidence provided and from my inspection of the site, the suggestion that the building is around 2 metres taller than the approved garage is clearly not correct. Nevertheless, it seems the purpose of the witness statement was to support the prosecution brought by the Council against the applicant felling a TPO tree in their garden, rather than investigation regarding the outbuilding itself. The Council does not appear to have relied upon this assessment through this appeal and has detailed the differences between the building as approved and the building as constructed, which include height differences, fenestration differences, the provision of an office/habitable space at first floor level and the omission of the parapet wall on the rear gable elevation.
12. I note concerns raised by the applicant that a Council enforcement [sic] advised that the pagoda [sic] was not of a concern to him as 'in his opinion it was permitted development'. However, I do not have full details of the discussion that took place and do not know how the officer came to that conclusion. Furthermore, a local planning authority cannot fetter its discretion to taken enforcement action through formal agreement. As will be seen from my decision letter, I have found that it is not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended). If the applicant wanted to be able to rely on the view provided by the officer, they could have applied for a certificate of lawfulness under section 191(1)(b) of the Act.
13. A diligent investigation carried out by a local planning authority may necessarily be an iterative process. The investigation carried out in respect of the appeal building appears to have been conflated with the Council's investigation regarding the felling of the TPO tree, which is not a matter which is before me. The applicant suggests that, if the local authority had intervened in the early stages of construction, we would not be at this stage. However, the Council raised its concerns that the building was being built differently to that approved under planning permission in November 2021.
14. While the enforcement regime is not intended to be punitive, the applicant has therefore been well aware that they were at risk of enforcement action at an early stage but proceeded with the development. I do not consider that the Council has behaved unreasonably. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

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15. The application made by the Council is procedural and substantive and is made on the basis that the appellant has failed to comply with the deadlines and requirements set out by the Planning Inspectorate and on the basis that the appellant's own survey contradicts its position that the outbuilding has not been constructed higher than approved.
16. The PPG advises that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include delay in providing information or other failure to adhere to deadlines.

17. The Planning Inspectorate sent out a timetable in its letter of 4 July 2025, which set out that the parties should submit their statements of case by 15 August. The appellant did not send a statement of case. On 18 September, the appellant submitted its final comments to the Planning Inspectorate, which included Appendix C, a report by an architect including a dimensional survey, undertaken on 9 September 2025 and advice/recommendations.
18. For some reason, that document was not provided to the local planning authority and so, given the contents of the document, the applicant (the Council) was given the opportunity to comment on the document. While I note the Council's concerns regarding the amount of time available to it to comment on the document, given the limited extent of new evidence, I consider the time given was not unreasonable and, the Council was not disadvantaged as a result.
19. Despite the Council raising its concerns through the appeal regarding the late submission, the appellant has not explained why it was not possible to provide this evidence in accordance with the timetable set out by the Planning Inspectorate. The final comments expanded upon arguments already set out in the appellant's grounds of appeal document, in relation to scaling from plans, and provided new evidence, including photographs of a building.
20. Appendix C, for example, introduced arguments which had not previously been made by the appellant, namely that it would not have been possible to construct the building as shown on the plans using conventional brickwork and the need to provide a leaded upstand from the slate roof. The architect also provides justification for the differences in the western gable and provides a series of recommendations. This went beyond simply providing measurements, which I could have observed during my site visit anyway.
21. The Planning Inspectorate had already confirmed in August that the Inspector wished for measurements to be taken on site. The appellant and the Council were both given the opportunity to take measurements during my visit. I believe the appellant was unreasonable in providing evidence at such a late stage. However, had the appellant submitted the evidence in accordance with the timetable provided by the Planning Inspectorate, it seems unlikely to me that the Council's response would have been substantively different.
22. I recognise that the Council officers may have felt disadvantaged during the site visit, because it had not had sight of Appendix C in advance. Nevertheless, the location of the measurements were agreed with both parties during the visit. Both I and the Council were able to see how the appellant had derived the measurements provided in Appendix C, and the Council was able to take its own measurements, using its own measuring device. I therefore consider, while the appellant has been unreasonable in failing to adhere to the deadline set by the Planning Inspectorate, the Council has not incurred wasted expense in responding to the appellant's points.
23. With regards to the substantive reason, the Council suggests that the appellant has behaved unreasonably in pursuing an appeal on ground (c) which, it is asserted, had no merit and/or reasonable chance of success. The PPG advises that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

24. Whether differences between a building as constructed and as permitted render earlier works, themselves within the permission, from being 'implementation' for the purposes of section 56(2) is a matter of fact and degree for the decision maker. While I have agreed with the Council that the permission has now lapsed, and that the appeal under ground (c) should fail, since this was a matter of judgement, I do not consider the appellant was unreasonable in exercising their right of appeal in this regard.
25. Thus, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and awards of costs are not warranted.

M.Savage

INSPECTOR