

Costs Decision

No site visit made

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 12 March 2026

**Costs application in relation to Appeal Ref: APP/J3720/C/25/3359453
Land adjacent to Tyburn Cottage, Tithe Barn Lane, Hockley Heath, Solihull
B94 5DJ**

- 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 Stratford-on-Avon District Council for a partial award of costs against Mr & Mrs Alan & Julia Wright.
 - The application for costs is in connection with appeals against an enforcement notice alleging, without planning permission, the change of use of Land from paddock (agricultural use) to a mixed use comprising:
 - (a) Stationing of single static caravan/mobile home for security purposes
 - (b) Storage of single static caravan/mobile home
 - (c) Grazing of horses; and
 - (d) Exercising and walking of dogs in connection with the business which operates from Tyburn Cottage and is known as 'Julianna's Kennels, Cattery and Grooming Parlour'
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Summary Decision: the application is granted and a partial award for costs is made in the terms set out in the Costs Order below

The case for the applicant

1. The application for costs made by the Council is very detailed and for that reason I do not rehearse it all here. However, the essence of the Council's case is that the submission of late evidence / new arguments / ground of appeal by the appellant and the need for additional work to read and address those matters which has resulted in additional Officer time spent on the appeal.
2. In that context, it is the Council's opinion that I should not consider the new evidence submitted by the appellants at the 6-week deadline (in the appellant's Statement of Case) because it is not relevant to the ground (d) and the facts were not set out on the Appeal Form. If I agree, the Council contends that it follows that the appellant has behaved unreasonably in relation to appeal proceedings and their actions have led to wasted expense for the Council because additional Officer time has been spent responding to matters that should not be under consideration in this ground (d) appeal.

The response by Mr & Mrs Alan & Julia Wright

3. The response by Mr & Mrs Alan & Julia Wright is also very detailed, exhaustive even. For that reason, I again do not rehearse it all here.
4. Regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the 2002 Regulations), which requires an appellant to submit a statement in writing, does not specify what constitutes

- a brief statement of the facts on which the appellant proposes to rely. It is accepted that the email from Mr Moseley dated 31 January was brief and usually something more detailed would be provided, but that email is consistent with the case that has been submitted.
5. It is accepted that the appellants' agent at the time was a well-meaning neighbour with no planning experience and did not fully understand the process. The appellants' need for further understanding of the nuances of the situation and the appeal process is evident from the Appeal Form.
 6. It is agreed that the argument's raised in the appellants' statement of case does not fall within ground (d) but they are not intended to. The appeal form does not require an appellant to make assertions as to the legality of the notice at that stage. However, if the notice does not comply with the requirements, it is a normal part of the appeal process to make those arguments, there being no statutory provision to raise these points in the normal grounds on which an appeal might be made.
 7. The approach taken to selecting the grounds of appeal was straightforward. As the appellants saw it, they had been using the land as a garden and for dog walking for over 35 years, and the caravans were part of that use. That is all there is to it.
 8. The appellants fully accept that limited evidence was provided with the grounds of appeal. However, it is common practice to submit evidence (including Statutory Declarations) with a statement of case. It is not reasonable to expect such information to be collated within the 28-day timescale to make an enforcement appeal.
 9. The appellant is clear that none of the matters raised by the Council constitute unreasonable behaviour. Furthermore, the Council has produced no evidence to show that it has incurred unnecessary and wasted expense.

Reasons

10. 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 introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
11. I am acutely aware that, in the beginning, the appellants were not professionally or legally represented. I make absolutely no criticism of the appellants in that regard: I do not underestimate the difficulty that the appellants found themselves in when faced with an enforcement notice and an unfamiliar process, all exacerbated by the short timeframe in which to respond¹. Neither do I make any criticism of the well-meaning neighbour who

¹ Albeit I note from the enforcement history of the site that an enforcement notice numbered 91/00206/HISTOR was issued in November 1991 alleging the use of the land for the stationing and residential occupation of a mobile

kindly stepped in to assist, notwithstanding his own lack of familiarity with the appeal process and planning matters generally.

12. One of the core values that underpins the work of the Planning Inspectorate is fairness. In a situation such as this where the appellants were initially not professionally or legally represented, I fully accept that the quality of the evidence submitted and adherence to the normal appeal procedures might not fully accord with normal expectations. I can fully understand why the appellants in this case did not perceive that there had been a breach of planning control: from their perspective, they had always used their land in that way. In my view, the appellant's actions at that time do not constitute unreasonable behaviour.
13. That all changed once the appellants had instructed a professional planning consultant. The expectation then is that the appeal would proceed entirely in accordance with the normal rules, procedures and guidance.
14. That is not to say the submission of further evidence at 'Statement Stage' was wrong in principle or in breach of the 2002 Regulations: indeed, the 'Final Comments' stage of the appeal process is specifically designed to enable parties to respond to evidence submitted at the 'statement stage'. It is common practice for appellants to enhance and/or bolster their evidence at that stage. As the appellants fairly point out, it would not have been possible to have the Statutory Declarations that were relied on compiled, signed and witnessed within the 28 days limit for submitting the appeal.
15. Neither do I agree with the Council that it is impermissible to introduce new grounds of appeal beyond those stated on the appeal form. Only an appeal on ground (a) is time limited, linked to the payment of the appropriate fee within the prescribed period. It is possible for additional grounds of appeal to be introduced at any stage of the proceedings, the acceptance of which is at the sole discretion of the Inspector. Of course, the danger of introducing late grounds of appeal is the risk of an award of costs against the appellant.
16. In this case, where I have difficulty is with the scope of the evidence submitted at 'Statement Stage'. To put this in proper context, it is first necessary to set out the precise ground of an appeal on ground (d). This is:

that, at the date on which the notice was issued, no enforcement action could be taken *in respect of any breach of planning control that may be constituted by those matters*
17. I have highlighted the above wording as, in my view, this is where the appellants slipped up. As I stated in my main Decision, on my reading of the appellant's evidence, I gained the distinct impression that the primary purpose of the appeal on ground (d) was a vehicle for a belated attempt to demonstrate that the use of the land subject to the notice as a domestic garden in association with Tyburn Cottage is lawful rather than to show that the breach of planning control alleged in the notice was now immune from enforcement action through the passage of time. It was obvious from reading the appellant's evidence that they deeply regretted not including the use of the land subject to the notice for domestic purposes in association with Tyburn Cottage in the application for the Certificate of lawful use or development

home. The appellants owned the property at that time and the issuing of that notice would have provided them with at least some experience of the process.

- submitted in July 2012 (Council Ref: 12/00679/LDE), and were seeking to make up for that with that evidence, notwithstanding that their understanding of the use found to be lawful in 2012 is entirely misconceived.
18. That is not the purpose of an appeal on ground (d). Even if I had found that the evidence showed that the use was lawful, which I did not, I could never have issued a lawful development certificate to that effect: success on ground (d) only results in the notice being quashed.
 19. I completely understand and accept that the appellants were not aware of the precise purpose of an appeal on ground (d) at the time the appeal was lodged: it is, after all, a technical aspect of the appeal process. That changed the moment the appellant instructed a professional planning consultants to act on their behalf. There is a reasonable expectation that a professional planning consultant would fully understand the purpose and scope of an appeal on ground (d), and its relationship with the other grounds of appeal set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act).
 20. Although some aspects of the evidence provided in the Statutory Declarations was highly relevant to the appeal made on ground (d) in this case, the vast majority of that evidence was simply unrelated to the breach of planning control constituted by the matters stated in the notice. Some of that evidence, but by no means all, I found to constitute appeals under grounds (b) and (f) as set out in section 174(2) of the 1990 Act, and to that extent was relevant.
 21. The salient point is that the Council was obliged to respond to that evidence in full in its Final Comments. The Council could not have anticipated what parts of that evidence, if any, I would find relevant to the appeal on ground (d). Neither could the Council have anticipated that I would take that evidence as constituting appeals on grounds (b) and (f). I therefore make absolutely no criticism of the Council for responding in full to the appellants' evidence submitted at 'Statement Stage', including the evidence contained in the Statutory Declarations, notwithstanding the apparent irrelevance of that evidence to an appeal on ground (d)². Indeed, they had no option other than to do so.
 22. There is an additional consideration here on which I must comment. The evidence provided in the Statutory Declarations did not in any way support the appellants appeal on ground (d). If anything, it torpedoed the appellants own appeal on that ground.
 23. For example, the evidence within the Statutory Declarations of Alan Wright, Julia Wright, Martyn Molesey and Shelagh Molesey confirmed that the static caravans/mobile homes as alleged in paragraph 3(a) and 3(b) of the notice were stationed on the land in or around September 2023. That is patently, and by a considerable margin, short of the minimum of 10 years required by section 171B (3) of the 1990 Act for a material change of use of land to achieve immunity from enforcement action³.

² Which, I note, was remarked upon in the Council's Final Comments.

³ I am not privy to the background and origins of the enforcement investigation carried out by the Council but based on the timing of the first site visit, I would venture that the bringing onto the land of the caravans was the catalyst for the complaint that led to that investigation. Hence, I am somewhat surprised that the appellants did not pay more attention to that date for the purposes of the appeal on ground (d).

24. Again, I would not have expected the appellants to have been aware of the intricacies of section 171B of the 1990 Act at the time that the appeal was initially lodged, especially as a copy of that section of the 1990 Act does not appear to have been provided with the notice itself. However, I would have fully expected a professional planning consultant to have picked up on that in reviewing the evidence in the Statutory Declarations as part of the ongoing review of the appellant's case.
25. The same applies to the operational development alleged in the notice. For example, it is the evidence of Alan Wright, Julia Wright, Martyn Moseley and Shelagh Moseley that the metal gate was erected in 2021, clarified by Julia Wright as being in May 2021 and by Martyn Moseley as being in March 2021. The enforcement notice was issued on 21 January 2025. Taking either of those dates, on the appellants' own evidence the metal gate could not possibly have been in situ for the requisite four years stated in section 171B (1) for operational development to become immune from enforcement action.
26. Similarly, it is the evidence of Alan Wright and Julia Wright that the paving slabs and larger bricks were added in 2023/2024. It follows that the hardsurface alleged in the notice has not been in situ for the requisite four years stated in section 171B (1) for operational development to become immune from enforcement action. I completely accept that the appellants might not have been aware that this constituted an engineering operation requiring planning permission, but a professional planning consultant should have picked up on that and at least made representations on the point.
27. The obvious corollary is, when applying the test of the balance of probability, on their own evidence the appellants' appeal on ground (d) never had any reasonable prospect of success. Indeed, the appellant's own evidence demonstrated that on the balance of probability the use and operational development alleged in the notice had not achieved immunity from enforcement action on the date the notice was issued.
28. Here then there is a situation where the vast majority of the evidence submitted by the appellants at 'Statement Stage' was wholly unrelated to the appeal on ground (d) on which the appeal had initially been lodged, and only of limited reference to the 'hidden' grounds of (b) and (f) that I identified. Given that the appellants were professionally represented at that time, the submission of that evidence amounts to unreasonable behaviour for the purposes of the PPG.
29. The Council was compelled to respond to the evidence submitted by the appellants at 'Statement Stage' in its Final Comments in order to safeguard its own position. In doing so, the Council incurred unnecessary and wasted expense in responding to evidence that for the most part was simply not relevant to the sole ground on which the appeal had initially been made.
30. 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, given that the appellants were initially not professionally or legally represented at the

time the appeal was initially made. However, the extent to which the appellants' evidence subsequently deviated from the grounds on which an appeal on ground (d) is supposed to be made compels me to reach that conclusion.

Costs Order

31. 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 Alan & Julia Wright shall pay to Stratford-on-Avon 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 and submitting its evidence at the Final Comments stage of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The Council is now invited to submit to Mr & Mrs Alan & Julia Wright, 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