



Costs Decision

Hearing held on 24 February 2026

Site visit made on 24 February 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2026

Costs application in relation to Appeal Ref: APP/F3545/C/25/3374713

Land Adjacent to Duke of Marlborough, Bury Road, Hepworth, Suffolk, IP22 2PX

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for costs was made in writing by the applicant prior to the Hearing being held and the local planning authority had responded. The applicant confirmed at the end of the Hearing that he did not wish to add to his application. I have dealt with the application on that basis.
3. 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.
4. The applicant seeks a full award of costs in respect of the following matters arising at appeal. Firstly, he considers the Enforcement Notice (EN) itself is unclear, internally inconsistent and lacks precision. In particular, it fails to clearly identify the reasons for taking enforcement action, including material considerations relied upon, and contains ambiguous terminology, including references to the mobile home as a “dwelling” and inconsistent references to a “self-build dwelling”. This lack of clarity caused significant procedural difficulties for the appellant who was required to expend additional time and resources to understand the Council’s position and respond appropriately.
5. Secondly the applicant states that the Council introduced fundamental reasons for taking enforcement action only at a late stage when they submitted their Statement of Case (SOC). Those reasons included, unsustainable location, highway safety, landscape and visual amenity, impact on trees, and potential effects on protected species. None of those matters were set out explicitly in the EN. By waiting until SOC stage to articulate those matters in detail, the Council deprived the appellant the opportunity to respond fully at the appropriate stage, thereby necessitating the submission of additional technical evidence, including an access plan, Arboriculture Impact Assessment (AIA) and the instruction of a Preliminary Ecological Appraisal (PEA).
6. Thirdly, the Council has conflated the EN appeal with a withdrawn planning application. The SOC refers to third-party objections and the withdrawn planning

application as justification for enforcement action. This complicated the appeal process and lead to further expense for the appellant.

7. Finally, the Council's approach forced the appellant to respond to issues that were not set out in the EN, including matters of highway safety, arboriculture impact and protected species. These late-stage assertions required the appellant to commission and submit technical evidence to ensure the Inspector had a complete and robust evidential basis to determine the appeal. The Council's failure to identify these matters earlier demonstrates unreasonableness and has directly resulted in unnecessary expense and delay.
8. In response the Council consider their conduct to be reasonable and proportionate. They consider that it was expedient to take enforcement action and the EN was based on the best information available. They sought information through a Planning Contravention Notice (PCN), which confirmed the residential use, number of caravans and installation of services. Those returns coupled with site observations reasonably informed the drafting of the notice and scope of the Council's case.
9. It is the Council's view that the matters for which the appellant later commissioned reports (access/visibility, arboriculture, ecology) are routine subjects that any ground (a) appeal or fresh planning proposal for residential use in the countryside would need to address. The timing of those reports reflects the appellant's own choices; their production does not evidence any unreasonable behaviour by the Council or unnecessary expense caused by it.
10. PPG advises that a local planning authority may be at risk of a procedural award of costs where, amongst other matters, they introduce fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen and/or prolonging the proceedings by introducing a new reason for refusal¹. In terms of a substantive award of costs, a local planning authority may be at risk where they fail to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead².
11. Section 173(10) of the Town and Country Planning Act, 1990, as amended (the Act) states that "an enforcement notice shall specify additional matters as may be prescribed," Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002/2682 set out the additional matters to be specified in the EN. Regulation 4 advises that an EN issued under S172 of the Act shall specify – (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.

¹ PPG: Paragraph: 047 Reference ID:16-047-20140306.

² PPG: Paragraph: 049 Reference ID:16-049-20140306.

12. The Courts have held that as a test, the meaning of “expedient” suggests the balancing of the advantages and disadvantages of a course of action³. Thus, whether it is expedient for a local planning authority to issue an EN will normally involve consideration of matters such as costs and consequences, as well as the (degree of) planning harm which should be set out in the reasons for issuing the EN.

13. Section 4 of the EN sets out the Council’s reasons for issuing the notice. It states that the development would conflict with Policies SP9, SP12, SP13, SP19, SP21, LP7, LP9, LP12 and LP41 of the West Suffolk Local Plan (WSLP). It goes on to state:

“Whilst the proposal would contribute to an additional home within the district, there is no legal agreement in place to ensure that it would come forward as self-build to contribute to the West Suffolk Council Self-Build and Custom House Building Register and the district has a 5-year housing land supply.

It is considered that there are no associated benefits with the proposed development that would outweigh the clear policy conflicts identified.”

14. The Council say that they served a PCN and the responses they received informed their drafting of the EN. The response to the PCN by the appellant advised that there was one static caravan on the site, one tourer and that the site was in residential use for a Gypsy/traveller family. Having received that response, the Council alleged the residential use of land as a caravan site, and their reasons for issuing the EN related to conflict with a policy relating to self-build housing in the countryside (WSLP Policy SP21 – Housing in the countryside). Moreover, the Council did not provide any information or evidence to support that reason for serving the notice during the appeal process. Thus, having regard to the appellant’s response to the PCN and in the absence of any supporting evidence submitted during the appeal process, it was unreasonable for the Council to cite conflict with Policy SP21 of the WSLP and I agree with the appellant that the reasons for issuing the EN were ambiguous and unclear.

15. The EN also indicates that Policy SP19 (Gypsies and Travellers and travelling showpeople) is relevant to the decision to issue the EN. However, the EN does not state why there is conflict with that Policy, nor does it set out any alleged harm by reason of conflict with Policy SP19 that would make it expedient for the Council to take enforcement action. Thus, the appellant cannot be said to have known what matters he needed to address to support of his appeal, other than conflict with Policy SP21 in so far as it was said to be housing in the countryside and a self-build dwelling. The Council’s SOC makes frequent reference to the inadequacies of a withdrawn planning application submitted by the appellant for the development of the site. However, the terms of the deemed planning application, ground (a), are derived from the allegation in the EN, it is not a proposal for development. The access to the site has already been constructed, hardstanding laid and caravans and buildings sited on the land and in residential use. If the breach of planning control has resulted in harm to material considerations of acknowledged importance, then that harm should have been clearly identified in the EN.

³ *R.(Ardagh Glass Ltd) v Chester CC* [2009] Env.L.R.34

16. It was only in the Council's SOC that they set out that they considered the appeal site's location not to be sustainable and expressed concerns over the accessibility of the site. Furthermore, if the Council had considered that the development had a harmful impact on highway safety, then that harm should have been set in the reasons for issuing the EN. In the absence of that harm being alleged in the EN, the appellant did not know that he needed to address highway safety concerns until after the Council submitted their SOC. The Council thus introduced new reasons for issuing the notice at SOC stage, this resulted in the appellant having to provide additional technical information to address concerns, and the local highway authority subsequently confirmed those matters could be dealt with by condition, including conditions to address active travel requirements.
17. The Council's SOC also identifies harm to the character and appearance of the area and suggest that in the absence of a landscaping plan or arboriculture/tree report, they have not been able to assess the impact of the development on the local landscape. The reasons for issuing the notice did not include a reason relating to arboriculture matters. However, the development had already been carried out, and no trees had been removed from the land. Nevertheless, to address the matters raised in the Council's SOC the appellant was then required to commission an AIA, which then accompanied his final comments. He could not have produced this earlier, as the EN did not allege any landscape/arboriculture harm, and this report was only necessary because the Council belatedly introduced a new reason/concern within their SOC. It was subsequently agreed that the submission of a landscaping scheme could be a condition of any permission granted.
18. The Council's SOC also raises concerns in relation to biodiversity and ecological matters. It suggests that a PEA is needed to assess the ecological value of the site. However, it is not possible to undertake a PEA once development has been carried out. If the Council had had concerns that the development had resulted in demonstrable harm to interests of biodiversity or ecology, then those concerns should have been set out in the reasons for issuing the EN. Again, the late introduction of a reason for issuing the EN resulted in the appellant having to address those matters at a late stage in the appeal process.
19. The appeal in this case was in relation to an EN it was not against a decision of the Council to refuse planning permission for a proposed development. The Council's reasons for issuing the EN as set out in Section 4 related to the proposed development of a self-build home. Whilst I appreciate that the appellant was aware of the nature of the development he had undertaken, he was required to make his appeal case in response to the Council's reasons for issuing the EN. Those reasons were unclear when he submitted his appeal and he therefore had to respond and expand his case as the Council introduced new reasons throughout the appeal process. That was unreasonable behaviour.
20. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the ambiguous reason on the EN for issuing the notice and the costs involved in the applicant needing to respond to matters latterly raised in the Council's SOC, some of which could have been dealt with by condition. A partial award of costs is therefore warranted.

Costs Order

21. 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 West Suffolk Council shall pay to Mr Walter Elliot Smith, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing matters during the appeal process that were only detailed in the Council's SOC and not set out as reasons for issuing the EN. Those matters included: sustainable location/accessibility; highway safety; character and appearance; biodiversity/ecology; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to West Suffolk Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR