Costs Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2026

Costs application in relation to Appeal Ref: APP/T2215/C/25/3376226
Land at Unit E, Malt House Farm, Green Street, Green Road, Darenth DA2 8DX

- 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 Dartford Borough Council for a full award of costs against Gibbs and Ball Ltd.
- The Hearing was in connection with an appeal against an enforcement notice which alleged the construction of a building, excavation and levelling of the land, laying of hardstanding, erection of fencing and the material change of use of the land.

Decision

1. The application for an award of costs is partially allowed.

The submission for the Applicant

2. The Council alleges the appellant has displayed unreasonable behaviour due to the way in which the appeal has been presented and in the way the case has evolved over the course of the appeal.

3. At the time of the submission of their appeal, the appellant's case was made under grounds (c), (d), (f) and (g).

4. On 14 January 2026 the parties submitted their respective Statements of Case. On 16 January 2026 the appellant withdraws their ground (d) appeal without any explanation or good reason. This in itself is unreasonable behaviour (procedurally). This is however not the only substantial pivot in the appellant's case, as their arguments pivot very significantly over the course of the following months.

5. Under ground (f), the appellant claims in the Initial Appeal document that there is a pre-existing lawful storage use of the land. However, this argument seems to be abandoned altogether by the time the Appellant Statement of Case is submitted. In the Appellant Statement of Case the only remaining argument appears to be that the Inspector should "consider enabling Permitted Development Rights". This is an entirely different case but is so poorly elucidated that it is impossible to establish what the Appellant is saying. The Appellant's Addendum Statement does not make their case any clearer as the Inspector is invited to "amending… section 5 to refer instead to carrying out a scheme of works enabled by Permitted Development Rights which still exist for the site under Schedule 2, Part 7, Class H of the General Permitted Development Order 2015". No explanation is given as to how those claimed permitted development rights could apply to the erection of an unauthorised building.

6. To add insult to injury, in the Addendum Statement the Appellant introduces a new argument that Unit D (note, this unit is outside the scope of the Enforcement Notice and in an entirely different planning unit) could retain the building at Unit E under permitted development rights. Not only is this argument fundamentally flawed in that Unit D is in a different planning unit, but also goes against the Appellant's previous concession (in the Initial Appeal Documents) that the size of the building and area of hard surfacing would exceed permitted development tolerances.

7. Under ground (c) the Initial Appeal document says that even if Unit E was an extension to Unit D, it would exceed permitted development limitations. The Appellant appears to maintain this position until submission of the Addendum Statement when suddenly their case is that permitted development tolerances are not exceeded.

8. Under ground (c) the Initial Appeal document says that the hard surfaces would exceed permitted development tolerances for E Class uses. The Appellant appears to maintain this position until submission of the Addendum Statement when suddenly their case is that permitted development tolerances are not exceeded.

9. At the time of submission of the Initial Appeal Document, a more extensive ground (c) appeal is made. In the Appellant Statement of Case it appears that ground (c) is abandoned for all aspects of the development except for excavation works which the appellant maintains is de minimis.

10. No actual evidence of the quantum of excavations is provided until Final Comments when the Appellant submits what appears to be an email with a single line that claims 254m3 of materials have been excavated and taken off the site. No explanation is advanced as to how this number is arrived at, how much material was levelled and why the calculations presented by the Council is incorrect. In any event, it is not plausible to maintain that the removal off site of 254m3 is de minimis.

11. Under ground (g) the appellant claimed there were logistical difficulties of complying but failed to provide evidence of these assertions. In their final comments, they say "the Appellant clarifies that the operation conducted from the site cannot be relocated immediately without significant disruption" when it is clear that the period for compliance is not "immediately" but is instead 9 months.

12. The continuous evolution of the Appellant's case has caused the Council to expend additional resources to continuously search around to second guess the Appellant's case, which includes but are not limited to:

    • Undertaking further research into immunity which included researching aerial photographs with the help of external companies. Liaising with neighbours to make further enquiries into evidence on immunity

    • Legal research to understand the appellant's evolving case under ground (c) and (f)

    • Doing the calculations of the volume of excavations by extrapolating from the submitted plans.

13. It appears to the Council that the Appellant's case has undergone a series of reformulations because difficulties emerged through the course of the appeal. The

appeals process has essentially been an opportunity for the appellant to construct a case that bears limited resemblance to the case originally advanced.

14. Furthermore, the Council is of the view that had the Appellant advanced their case properly from the outset, a hearing would not have been necessary. The procedure was decided at a time when the appellant's case was very different from the way the case is advanced now and the Council contends that the written representations procedure would have been appropriate to deal with the appeal.

15. During the Hearing the appellant also accepted that the evidential onus was on them yet there has been no clarification on the figures provided. The appeal should not have been brought as it was indefensible, but if the case had been clear from the outset, the appeal could have been dealt with by written representations. The need for a Hearing has therefore led to wasted and unnecessary expense.

16. The Council is seeking all its costs because it maintains that the appeal should not have been brought at all or that it should have been brought properly at the outset without causing the Council to speculate as to the Appellant's case.

The response for the Appellant

17. The Council's procedural complaint centres on the withdrawal of Ground (d). This allegation is misconceived. In carrying out due diligence following instruction, the Council were asked to provide their basis for determining that the unauthorised development did not enjoy immunity under 171B of the TCPA 1990 (as amended). The Council did not hold any such evidence, supplying only the original complaint (redacted) with a copied and undated photograph. The details within the complaint were not precise, and it was clear that the Council did not know the date at which the construction of the building was at least substantially complete.

18. On the basis of the facts known at that time, the appeal as submitted included Ground (d). The Appellant is well aware of the need to keep its case under review throughout the appeal process. Initially, and in light of the evidential position (including the absence of clear evidence from the Council, as identified in the original Statement of Case), the Appellant considered whether an immunity argument could properly be advanced. Upon further consideration, the Appellant concluded that such a case could not reasonably be maintained and therefore withdrew Ground (d). That was the proper and reasonable course, and the withdrawal of the Ground (d) appeal took place at the earliest opportunity, and at the point that the Statement of Case was due. Although the original appeal submission had included an earlier version of the Statement of Case, that document was replaced with the final Statement of Case submitted on the 16th January 2026, prior to the Case Management Conference, and before any substantial work would have been carried out by the Council in respect of the revised procedure and timetable as set out by the Inspector following the CMC.

19. Clearly, if an inarguable point on either side is maintained belligerently through the appeal process to a late stage, requiring parties to carry out work which is ultimately wasted, then that party may have acted unreasonably and would be at risk of a costs award. However, that is not the situation here. The Council's position amounts to an assertion that narrowing the issues in dispute is itself unreasonable. That is plainly wrong. If correct, it would create a perverse and dangerous precedent whereby appellants are penalised in costs for reducing areas of conflict

between the parties. Far from being unreasonable, the Appellant's conduct represents exactly the type of proportionate and responsible case management encouraged by policy and practice.

20. The Council's wider allegation of substantive unreasonableness is similarly unfounded. This is not a case where the Appellant has acted unreasonably, but rather one where the Council has repeatedly misunderstood (or mischaracterised) the Appellant's case, notwithstanding that it has been set out in detail through the appeal process. The Council's own submissions demonstrate a confused and inconsistent understanding of the Appellant's position. The evolution of arguments identified by the Council does not amount to unreasonable behaviour; it reflects the ordinary and proper refinement of a case as matters are clarified, evidence is considered, and issues are narrowed.

21. The merits of the arguments presented by the appellant will be discussed, and if necessary clarified, in the hearing and adjudicated by the Inspector in due course. Whether the Council understands, or agrees with, the thrust of the case presented is not an indication of unreasonable behaviour on the appellant's part. Notwithstanding, the case presented in respect of all the grounds for appeal have been properly set out and articulated in the submission papers. The appellant does not intend to repeat those arguments here but will be more than happy to provide any clarification to the Inspector, if so requested. Appeals of this nature frequently involve the development and clarification of arguments across Statements of Case, addenda and final comments. That is inherent in the process and does not, without more, constitute unreasonable conduct.

22. Critically, the Council has entirely failed to identify any clear causal link between the alleged unreasonable behaviour and unnecessary or wasted expense, as required by PINS guidance. At paragraph 1.10, the Council advances three broad assertions of additional work. These are plainly insufficient:

    (a) The Council has not demonstrated any entitlement to the costs of the entire appeal. The suggestion that discrete elements of additional work justify a full award of costs is wholly unparticularised and unsustainable.

    (b) The activities relied upon (including research, evidence gathering, and analysis of the Appellant's case) are part of the ordinary burden on a local planning authority in defending a reasonably brought enforcement appeal.

    (c) The Council has provided no evidence that such work was materially greater than would ordinarily be expected in a case of this nature.

23. The application therefore fails at the second and essential limb of the costs test.

24. At paragraph 1.13, the Council contends that the appeal should not have been brought at all. This is an extraordinary and highly unusual submission. It implies that no reasonable appellant could have challenged the Enforcement Notice. That stance is unsustainable and serves to illustrate the fundamentally flawed and confused basis of the costs application. The right of appeal is a statutory one, and there is nothing unreasonable in exercising it where, as here, there are properly arguable grounds.

25. The Council's submission at paragraph 1.12 that a hearing would not have been necessary but for the Appellant's conduct, must also be firmly rejected. The original

appeal submission requested a hearing, owing to the nature of the grounds and issues involved. The Council requested the written representation method, but the decision was taken by PINS to follow the Public Inquiry route. The decision to proceed by way of a hearing was made by the Inspector at the Case Management Conference, which took place after the Appellant's revised Statement of Case had been submitted.

26. In advancing this argument, the Council is in effect suggesting that the Inspector's procedural decision was itself unreasonable. That is an untenable position and should be given no weight. It is peculiar for the Council to argue that the appellant has been unreasonable in that decision, when it was the Inspector who issued the final decision on the matter.

27. The Council has failed to demonstrate that the Appellant has acted unreasonably, whether procedurally or substantively. In any event, it has failed to show that any alleged behaviour has resulted in unnecessary or wasted expense. Indeed, the entirely misconceived and poorly justified costs submission in itself could be construed as unreasonable behaviour, and the time spent constructing this response considered as an unnecessary and wasted expense. However, the appellant does not intend to make their own costs application.

28. It is accepted that the evidential onus is on the appellant. Evidence was discussed during the Hearing and was arguable. It was sufficiently detailed. It is also normal for there to be an evolution of an appeal case and a change in the grounds of appeal. The Inspector then decided the procedure, and the appellant has never argued against the appeal being dealt with by written representations.

29. The application for costs is therefore wholly without merit and should be refused.

Inspector Reasons

30. 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.

31. The ground (d) appeal was withdrawn after the Council had incurred expense. No specific reason was seemingly given for the withdrawal at the time. The lodging of a ground (d) appeal also meant that evidence would need to be tested by means of cross-examination and so a Public Inquiry was the necessary procedure. It further meant a Case Management Conference (CMC) was to be held. Given the CMC had been arranged and the withdrawal of the ground (d) appeal meant a different procedure and bespoke timetable would then need to be agreed, it was indeed still held. This would not have been the case had a ground (d) appeal not been lodged.

32. I am then concerned that a ground (d) appeal was seemingly lodged and maintained for some time on the basis of the appellant considering there was an absence of clear evidence from the Council as to when the developments enforced against were substantially complete. This is entirely the wrong approach, as the evidential onus is on the appellant, as was accepted by the appellant during the Hearing in relation to the other legal grounds of appeal. The appellant should have reasonably known when the developments were substantially complete as they were best placed and so should not have engaged in an exercise of establishing

what the Council did or did not know to try and build a case of immunity from enforcement action.

33. The lodging and withdrawal of the ground (d) appeal therefore amounts to unreasonable behaviour which has resulted in the Applicant incurring unnecessary and wasted expense.

34. I also accept that the appellant's case evolved over time. There was however a prospect of this given the bespoke timetable agreed by the parties during the CMC afforded the submission of further statements. The appellant's case was however properly articulated and therefore I do not accept the Applicant had to second guess the appellant's case.

35. During the CMC both parties readily agreed that a Hearing was by then the appropriate procedure. This pre-dates the exchange of further statements, but I do not accept the appellant's case subsequently became very different such that it could have been dealt with by means of written representations alone. The Hearing enabled me to ask relevant questions of the parties for the purposes of my assessment and also enabled the volume figures provided by the parties to be explored, amongst other things.

36. The remaining appeal as a whole was then not unreasonably brought, and some success was found on ground (g).

Conclusion

37. Accordingly, unreasonable behaviour resulting in unnecessary or wasted expense has partially occurred and so a partial award of costs is warranted.

Costs Order

38. 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 Gibbs and Ball Ltd shall pay to Dartford Borough Council the costs of the appeal proceedings described in the heading of this decision in respect of the ground (d) appeal costs only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

39. The Applicant is now invited to submit to Gibbs and Ball Ltd 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 T Hocking

INSPECTOR