



Costs Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2026

Costs application in relation to Appeal Ref: K1128/X/24/3348574 Alston Gate, Malborough, Kingsbridge, TQ7 3BT

- The application is 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 application is made by Mr Simon Gotch for a full award of costs against South Hams District Council.
 - The appeal is against a refusal of a Lawful Development Certificate (LDC) regarding an existing use as a commercial horticultural nursery and garden centre (Use Class E)
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Decisions

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) on appeals 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.
3. The appellant considers that the Council has interpreted judicial authority incorrectly; it has attempted to distinguish between the 'use' permitted by that permission and the use within that permission; alternatively that the Council believe another use has superceded the express permission although such a use is not lawful through immunity to enforcement; the Council has not demonstrated that the lawful use of the site has been abandoned; and, that the Council has introduced a new reason for refusal relating to the erosion of the planning unit is such that there no longer exists a permission under which the nursery use can lawfully operate.
4. In its brief response, the Council state that it has not acted unreasonably and the officer report sets out the reasons why the application was refused. There is nothing new in the idea that the abandonment of the previous use results from the erosion of a planning unit and this does not represent a new reason for refusal. In any event the Inspector is obliged to consider all relevant matters, not just those flagged up in the reason for refusal.
5. It is clear that the Council have not been persuaded by the evidence submitted by the appellant and have probably reached their conclusions partially on a misunderstanding of the former owner's assumed ownership of the residential site prior to its development and this influenced its view on the owners' intentions.
6. The Council has attached considerable weight to the change in the planning unit although offer no authorities to support this view. However this does not mean that the principle that the Council is expounding is incorrect and case law such as Stone & Stone referred to in my decision letter confirms this.

7. It was established in *Gabbittas*¹ that evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. In this case there is a statutory declaration from the previous owner supported by several documents which the Council do not appear to attach the degree of weight normally applied to such declarations.
8. I find that the Council's admission that the concept of abandonment 'may well not apply in the strictest sense' to be curious as this underpins part of their argument for refusal. They have also interpreted the change in the planning unit in a very narrow way without having proper regard for the extant planning permissions on the site.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

10. 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 South Hams District Council shall pay Mr Simon Gotch the cost of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. Mr Simon Gotch is invited to submit to South Hams District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

P N Jarratt

INSPECTOR

¹ *Gabbittas v SSE & Newham BC* [1985] JPL 630