



Costs Decision

Inquiry held on 12 and 13 May 2026

Site visits made on 11 and 12 May 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2026

Costs application in relation to Appeal Ref: APP/W1525/C/26/3377239 Land north of Highfields Farm Barn, Highfields Mead, East Hanningfield, Chelmsford CM3 8AW

- 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 Chelmsford City Council for a full award of costs against Mr Eli Low.
 - The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission, the construction of three buildings, a path, lighting columns and concrete platform.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. A full award of costs is sought by the Council on substantive and procedural grounds. The Council's application was submitted in writing before closing appeal submissions were made, while the appellant's response and the Council's final comments were submitted in writing shortly after the second day of the Inquiry, before the Inquiry was closed in writing. The costs submissions are therefore a matter of record and there is no need to rehearse them in this decision.
4. The appeal followed the Inquiry procedure, as requested by the appellant at the outset. The contents of their grounds of appeal suggested I would likely benefit from hearing sworn evidence in respect of how the land has been used so far as relevant to the appeal on grounds (a) and (c). The appellant withdrew the appeal on ground (c) at the Case Management Conference (CMC), where the Council agreed that an in-person event would remain necessary as there was a lot of public interest in the appeal. The appellant indicated at the CMC that up to 4 witnesses would be called to give evidence, but they also advised that they did not think evidence would need to be given under oath, and that a roundtable discussion would likely suffice. The parties were therefore in agreement that a public in-person event, compared to the written representations procedure, remained appropriate.
5. Following the CMC, it was my decision for the appeal to continue as an Inquiry in order for me to hear sworn evidence relating to the use of the land in particular, as

the submissions made up until that point indicated that this would be an important consideration in the appeal on ground (a). That remained my view after receiving proofs of evidence, and the relevance of the use of the land to the character and appearance of the area is explained in my appeal decision.

6. It was reasonable to save time and costs for all parties in the appeal process for the appellant to withdraw their appeal on ground (c) once they had reviewed the Council's statement of case. They may well have been aware of condition 6 of planning permission 05/01795/FUL when preparing their statement of case, but it was not unreasonable for them to proceed without referring to it when there is no evidence that the Council had raised this with them before, as it is not explicitly highlighted in the planning contravention notice, the enforcement report, the enforcement notice, or the documents accompanying the appeal questionnaire. The appellant's initial ground (c) case was not unarguable and as such, initially lodging an appeal on that ground was not unreasonable.
7. At the event, the appellant only called two witnesses and only two members of the public spoke as interested parties, one being the appellant's daughter. Several other members of the public attended to observe. The appellant was not obliged to call any additional witnesses and although it was anticipated that Mr Hill would provide oral evidence to the Inquiry, it was not unreasonable for the appellant to rely on Mr Hill's statutory declaration (SD), presumably in the knowledge that it would be afforded less weight than oral evidence given under oath and subject to cross-examination. Doing so saved time and expense.
8. Although I have disagreed with the appellant in respect of curtilage matters, their case in this regard was not without merit. The range of case law I have been referred to shows this is an issue which often involves debate. It was not unreasonable for the appellant to claim the site is within the curtilage of Highfields Farm Barn, which was initially most relevant to the appeal on ground (c), but also to the appeal on ground (a). It is not the case that the appellant failed to provide any tangible evidence to support their case in this regard.
9. Disagreement as to whether a fence existed between the lawned garden to Highfields Farm Barn and the site was odd, as photographs clearly show the existence of a fence. Clarification was provided at the Inquiry as to when and why the fence was erected and taken down, and the existence of a gate within that fence. The Council was previously aware of the gate, which was referred to in its statement of case. Considering the prior presentation of the photographs, I see no reason why it would have been necessary for the Statement of Common Ground to explicitly state that such fencing existed or for the Council to produce an SD from its officer confirming that they had witnessed the fencing shown in the photographs. The Council could have very easily produced brief oral evidence to the Inquiry rather than incur the costs of producing an SD.
10. The appellant's written submissions refer to their being no separation between the lawned garden to Highfields Farm Barn and the site, which was inaccurate. There can be different levels and types of separation, but it was unreasonable for the appellant's written submissions to repeat those claims which were obviously contrary to photographic evidence. However, even before hearing Mr Low's oral evidence it was clear to me from the photographs that a fence with gate had existed, and this was not a contentious issue at the Inquiry. It was dealt with fairly swiftly as part of Mr Low's evidence in cross-examination and re-examination and

as such I do not find that the Council incurred any unnecessary or wasted expense over and above that which would ordinarily be incurred in such an event.

11. It is not the case that the appellant provided no evidence to substantiate the claim that the land has been used as garden for a continuous period exceeding ten years. Aerial photographs were referred to and Mr Hill's SD was relied upon. Considering the relevant test of the evidence is the balance of probabilities, it was not unreasonable for the appellant to rely on this evidence alongside Mr Low's account of his use of the land since purchasing it, notwithstanding the extent of land outlined in red in previous planning application documents.
12. I have found that planning permission should be granted for most of the development and that it should not be granted for some of the development. It is not the case that the appeal on ground (a) stood no reasonable prospect of succeeding, which is clear from my reasoning in the appeal decision.
13. I therefore find no evidence of unreasonable behaviour on the part of the appellant leading to unnecessary or wasted expense incurred by the Council, and an award of costs is not warranted.

L Douglas

INSPECTOR