



Costs Decision

Site visit made on 12 May 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2026

Costs application in relation to Appeal Ref: APP/W1145/X/24/3353053 Land at Braddon Fishing Lakes, The Byre, 6 Braddon Farm Cottages, Ashwater, Beaworthy EX21 5EP

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Midgley for a full award of costs against Torridge District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of an approved fishing lake for recreational fishing.
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Decision

1. The application for an award of costs 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) 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. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. The applicant has referred to some of the examples. To my mind the examples most relevant to this costs application include:
 - lack of co-operation with the other party or parties.
 - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - failure to produce evidence to substantiate each reason for refusal on appeal.
 - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

4. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.
5. The costs applicant says that the application subject of the appeal is a second LDC application submitted in an attempt to overcome the Council's reason for refusal of the first LDC application. They say, however, that in refusing the second LDC application, the Council introduce a new matter, which is whether or not the lake in question has the benefit of the 1/1419/1990 planning permission (the 1990 Permission).
6. My decision demonstrates that the matter of whether or not the 1990 Permission is extant is entirely relevant to whether an LDC ought to be granted in this case. The Council were, therefore, right to consider this in their determination of the LDC application. The applicant suggests that this is a new matter, it not having been raised in the previous LDC application. If so, I can understand the applicant's frustrations in this regard. However, this is not a new matter that has been raised in the course of the LDC application subject of this appeal, nor in the appeal itself. It is a matter referred to in the officer report on the LDC application and in the Council's appeal submissions. Unreasonable behaviour in respect of **this** appeal has not, therefore, been demonstrated. This conclusion is consistent with the costs decisions that have been drawn to my attention.
7. Although the reason for refusal of the LDC application does not refer to the Council's case with regard to the implementation of the 1990 Permission, I note above that this is considered within the officer report on the LDC application. However, in determining the LDC application the Council does not appear to have had regard to the submissions of interested parties who corroborate the applicant's claim that the lake was dug within the life of the 1990 Permission, and who provide photographic evidence to that effect. The third party representations are a material consideration in this case and were drawn to the Council's attention by the applicant in the letter of 20 August 2024, prior to the determination of the LDC application.
8. In addition to the above, in preparing its appeal submissions, the Council does not appear to have reviewed its case in light of the evidence, which includes the representations of interested parties highlighted by the applicant.
9. I have considered whether the Council could have reasonably reached the same conclusion that it has on the matter of the implementation of the 1990 Permission, had it had proper regard to all evidence, including the interested parties' representations. I have found the interested parties' evidence to be compelling, for the reasons given in my decision on this appeal. This evidence is clear on its face, with regard to when the interested parties say the lake was dug.
10. Furthermore, whilst I have noted the Council's suggestion that the applicant's evidence is contradictory on this matter, I have not been persuaded by this. I say this, particularly in light of the applicant's clarification on this matter during the LDC application process.
11. In response to the costs application, the Council say it was not able to 'substantiate the commencement with satellite imaging'. As I note in my decision, this in itself is not evidence to contradict or make the applicant's version of events less than

- probable, yet it appears to have been weighed by the Council in the balance in this case when it determined the LDC application.
12. The applicant's evidence on the implementation of the 1990 Permission is corroborated by the independent evidence of the interested parties. Having regard to the weight I have attributed to this corroboratory evidence, I can only conclude that the Council would have been unreasonable to retain its current position on the implementation of the 1990 Permission, had it had proper regard to all evidence before it. I say this, mindful that the Council rely only on the date of commencement of the works to construct the lake to suggest that the 1990 Permission has not been implemented and is not extant. It gives no other reason to suggest that the 1990 Permission is not extant. For these reasons, I can only conclude that the Council have behaved unreasonably in its approach to this aspect of the appeal.
13. Because the Council concluded as it has with regard to the 1990 Permission, it did not consider the case made by the applicant in their statement submitted with the LDC application (and also maintained throughout the appeal). The applicant's case was that, because the lake has the benefit of the 1990 Permission, its use for recreational fishing also has the benefit of the 1990 Permission, and that this permitted use had not been lost before the LDC application was made.
14. Had the Council had proper regard to **all** of the evidence when considering whether the 1990 Permission had been implemented and, therefore, extant, I can only conclude that it would have granted the LDC. I say this because the Council say in the LDC delegated report (and repeat this in its appeal statement) that:
- ‘A key consideration is whether the permission was commenced within the appropriate time-period. Were this the case, then the works for the creation and use of the lake would be covered by the extant 1990 permission.’
15. This tells me that, had the Council concluded that the 1990 Permission was extant, it would have concluded that the use for which the LDC was sought would have been permitted by the 1990 Permission. It would not have moved on to consider whether the use of the land for recreational fishing had continued substantially uninterrupted for a period of 10 years or more beginning with the date the use commenced, which is the reason given for the refusal of the LDC application.
16. The above leads me to conclude that the appeal could have been avoided, had the Council had proper regard to all evidence before it in determining the LDC application, including the representations of interested parties, and properly addressed the case made by the costs applicant.
17. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

18. 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 Torridge District Council shall pay to Mr David Midgley, the costs 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.

19. The applicant is now invited to submit to Torridge 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.

J Moss

INSPECTOR