
Costs Decision

Site visit made on 24 June 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2026

Costs application in relation to Appeal Ref: APP/Y0435/C/24/3355968

Unit Nine, 9 Bridgeturn Avenue, Old Wolverton, MILTON KEYNES, MK12 5QL

- 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 Milton Keynes Council for a full award of costs against Mr Domenico Rampello (RGS Music Limited).
 - The appeal was against an enforcement notice alleging the unauthorised material change of use to a music venue/ nightclub (*sui generis*) and associated operational development.
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Decision

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

The Application and Response

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. The Council's application, the response of RGS Music Ltd and the Council's final comments were all received in writing and the content will be familiar to the parties. Accordingly, the following is a brief summary of the main points.

The Council's Application

4. The application for a full award is made on both procedural and substantive grounds. On procedural grounds the appellant did not submit full details and facts within the initial appeal documents and sought to expand on the information provided as the appeal progressed. This was contrary to the Procedural Guide for Enforcement Appeals and unreasonable, limiting the time available for the Council to scrutinise and respond to the evidence.
5. On substantive matters the appeal statement did not respond to the reasons for issuing the enforcement notice and the relevant policies listed in section 4 of the Notice have not been referred to. The appellant's case for the appeal is solely one of a planning balance – seeking to argue the ancillary lawful use of the recording studio and stating a condition in relation to the music venue/nightclub's hours of operation in relation to the parking aspect, outweighs the ongoing harm of the nightclub/music venue element. In accordance with national policy, this is a recognised main town centre use which is not located within a main town centre with no justification provided for why it cannot be located anywhere other than the current location.

6. The material considerations stated within the Council's statement of case have not been addressed as the Appellant has provided inadequate supporting evidence or no evidence at all and is pursuing a ground of appeal that has no reasonable prospect of succeeding. This is unreasonable behaviour.
7. The appellant has known for 2 years that they require a retrospective planning application, with relevant supporting documents. No attempt has been made to submit a further application and communication ceased in December 2023. When a retrospective application was made several key documents were missing and the appellant showed no inclination of rectifying the issues raised. This shows an intention to drag out the unauthorised use to the 10 year immunity mark without addressing the Council's concerns.
8. The overarching observation is that the appellant's behaviour throughout has led to a deliberately protracted process in securing the removal of the nightclub/music venue. The Council set out the need for national and local documents/assessments when invalidating the retrospective application, as well as further clarifying the full harms arising when serving the enforcement notice, indicating what information would need to be provided to carry out assessment against relevant policies. The appellant has failed to respond to these clear signals in making their appeal, meaning it has no reasonable prospect of success – it's clearly contrary to the development plan with no evidence and/or material consideration presented to demonstrate otherwise.

The Response of RGS Music Ltd.

9. The Appellant's Grounds of Appeal made clear the scope of the appeal and the extent of information that would be provided within the subsequent Statement of Case. Furthermore, it provided the evidence that was available at that time. The Enforcement Notice was served on 24 October 2024 and was to take effect on 25 November 2024. As the Appeal must have been lodged before the effective date, this provided the Appellant with only one month to prepare and submit the Grounds of Appeal.
10. Not all the evidence is available at the outset. For example, information on the planning history of the building and the surrounding area was not immediately available: the Council's website currently notes that they are in the process of migrating older documentation to its new planning register. Consequently, supporting documents for historic planning applications are not available to view. Similarly, the research undertaken in relation to matters such as the loss of employment land, the availability of alternative premises and accordance with the sequential approach, is not immediately available and takes time to research and review.
11. The Enforcement Officer's Delegated Report was not published or provided to the Appellant before the Council's Appeal Questionnaire was submitted. As such, the Appellant was unable to understand the Council's full position at the time the Grounds of Appeal were prepared. Consequently, it must be accepted that not all facts and evidence are available prior to the submission of the Grounds of Appeal. Nevertheless, the Grounds of Appeal clearly set out and signalled the scope of the appeal and the nature of the information that would be submitted in support of the grounds in the Appellant's full Statement of Case.

12. This process is consistent with the Written Representations Procedures for enforcement appeals, which allow appellants to 'make any further representations' within six weeks of the start date. The Council is still afforded the opportunity to comment at the nine-week stage and is not prejudiced. The Appellant has therefore complied with the requirements of the procedures and has not behaved unreasonably.
13. On substantive grounds the matters raised within the enforcement notice and relevant policies are addressed within the grounds of appeal and statement of case. Matters of noise and lighting were not raised within the reasons for issuing the enforcement notice such that the appellant could not have been expected to respond to those matters which were only raised late in the process.
14. The Council's characterisation that the appellant's case is based upon part of the development falling within Class E is incorrect. The appellant accepts that the use overall is sui generis and has shown that it meets the relevant policies of the development plan.
15. Reference to historic matters relating to the submission of a retrospective planning application is misguided and no correspondence has been submitted. In any event, the appellant is perfectly entitled to submit an appeal against the enforcement notice, regardless of any historic correspondence.
16. Moreover, the suggestion that the failure to previously submit a valid retrospective application is evidence that the appeal had no reasonable prospect of succeeding is illogical. The development has been shown to comply with planning policy and pre-application discussions had previously indicated that planning permission would be granted if an application was submitted. In fact, it would appear that the enforcement notice was served primarily to avoid the use gaining immunity from the passage of time as opposed to in response to any particular harm.
17. The appellant's case in respect of lesser steps in relation to ground (f) and the time period for compliance under ground (g) was clearly set out.
18. Overall, the appellant has not behaved unreasonably and there are no grounds for an award of costs.

Reasons

19. Paragraph 052 of the PPG identifies a number of examples where costs may be awarded on procedural grounds. These include lack of co-operation with the other party in providing information; only supplying relevant information at appeal when it was requested, but not provided, at application stage; introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and deliberately concealing relevant evidence at planning stage or at a subsequent appeal.
20. The Council has referred to previous attempts to submit a retrospective application as evidence that the appellant displayed a deliberate lack of co-operation. However, without any supporting documentation to enable me to understand why those applications were deemed to be invalid it is hard to tell if the appellant was being deliberately obstructive, whether the Council was being overly officious or a combination of both. Thus, I cannot reach any conclusion on whether that was evidence of unreasonable behaviour from the information submitted.

21. Moreover, there never was a valid planning permission. The appellant was perfectly entitled to submit an appeal in response to the specific issues raised within the enforcement notice. Until that notice was served it is not clear how the appellant could have predicted what the Council's reasons for serving the enforcement notice would be.
22. The process of validating a planning application is considerably different to the process of determining whether any harm would arise from a development. The former is merely a procedural check of whether the correct documents are in place. If some required information was missing when an application was submitted it does not necessarily indicate that harm would arise in respect of whatever subject matter that document referred to.
23. From reading the documentation I do get a sense that the Council served the enforcement notice, at least in part, on the basis that the appellant had failed to submit a valid planning application. There certainly appears to have been frustration that wasn't done. However, that is a separate matter to the perfectly legitimate right to appeal against the notice and the stated reasons for issuing it.
24. Therefore, the Council's suggestion that the appellant should have been in a position to know what information would be needed to be submitted with the appeal is misguided in my view. The onus is on the Council to identify harm and set out the reasons for issuing a notice and the failure to submit an application is not evidence of such harm.
25. Moreover, it is not clear if there was any forewarning of when the enforcement notice would be served. Compared to planning appeals under s78 of the Act, appeals against an enforcement notice must be submitted within a faster timeframe. I appreciate some of the difficulties that can bring, particularly if evidence needs to be gathered which is not readily available, as would appear to have been the case in some respects in this case.
26. Thus, it is not uncommon for the initial grounds of appeal to set out the main points of argument and for that to be supplemented when the statement of case is submitted at the 6 week stage. It was not a case of the appellant submitting entirely new grounds on matters not previously referred to. The statement of case simply elaborated on the case already set out which is not unusual. If that was not permissible there would be little point in having a 6 week statement at all.
27. In any event, the appellant's initial grounds of appeal was a substantial document which addressed the stated reasons for issuing the enforcement notice, including relevant planning policies. The case for the respective grounds of appeal was clearly set out. It was not a situation, as can sometimes arise in enforcement appeals, where the initial information was so scant as to make it difficult to work out what case was being made. The information provided at the 6-week stage simply added some more detail to the case already made.
28. Consequently, the appeal was not unreasonably made on procedural grounds and all timetables were adhered to. Furthermore, all of the matters raised were relevant to the appeal and the Council would have needed to address them as part of its own statement. There is no indication that they were unable to do so or that any additional cost arose as a result of how the appeal was submitted.

29. On substantive matters, there was clearly no unreasonable behaviour and it was simply a case where the respective parties differed on the planning merits in respect of ground (a). As noted by the appellant, the Council had indicated at the pre-application stage that it may be minded to grant planning permission for the use, if a planning application was submitted.
30. Whilst such advice is not binding, I find it difficult to see how the Council could switch positions from one where it would have been minded to grant permission to a case where it now claims the ground (a) appeal had no reasonable prospect of success. The issues at stake do not appear to have altered albeit that the previous advice was some years ago.
31. Again, I detect a sense that the Council considered that the only way to assess the impact of development was if a planning application was submitted and that the decision to issue to notice was, at least in part, driven by the failure of the appellant to make a valid submission. That is evident from the delegated officer report, particularly the following passage:

An expediency review determined that given the scale and nature of the change of use and the additional unauthorised structures in place to facilitate the unauthorised use, an application would be required to formally assess the use against the Local Plan Policies; and it would be possible that the proposal would be in conflict with some Policies; as outlined within this report As the owner has chosen to cease engaging with the Council, acting as the Local Planning Authority and no further application has been submitted, it is considered expedient and in the public interest to take enforcement action, or the use of the site and associated structures/signage will become immune to formal enforcement action.

32. That theme was continued in the Council's final right of reply to the costs application¹ which states:

The LPA was highlighting the fact that the Appellant had previous knowledge of the documents and information that would have been required to be submitted for the Appeal, so an appropriate assessment could be made as to the suitability of the site in this location. The LPA maintains its position that this has still not been made, and the use of the site cannot be appropriately assessed against policy for the Inspector to determine whether the Appeal has a reasonable prospect of succeeding.

33. The inference is that it was not possible for an assessment to be made of whether the development complied with planning policy in the absence of a planning application. I accept that it is for the appellant to submit evidence to demonstrate why permission should be granted under ground (a). However, the issue works both ways in respect of enforcement appeals. The purpose of submitting documents in support of a planning application, in cases prior to the development having occurred, is to enable an assessment of what the likely impact will be. In this case, the use had been operational since 2016 so the Council has had plenty of opportunity to assess the impact and to determine whether it was in accordance with relevant policies.
34. However, no direct evidence was submitted by the Council in respect of some of the matters alleged to be harmful, particularly car parking and congestion. Matters

¹ Paragraph 1.11

- of noise and lighting were raised, again with no evidence that any harm had arisen in respect of such matters and despite the fact that neither issue was raised as a reason for issuing the enforcement notice, within the notice itself.
35. The feeling I am left with is that the Council considered the onus was entirely on the appellant to demonstrate why permission should be granted through the submission of a planning application whereas, when serving an enforcement notice, there was also an onus on it to demonstrate what harm had actually been caused.
36. There were matters relating to planning policy that required a finely balanced judgement, particularly in relation to the loss of the employment unit and transport related matters in terms of the location and accessibility of the site. For example, the onus was clearly on the appellant to provide evidence of whether there were any alternative available sites and in relation to the general supply of employment land. However, evidence was submitted in those respects and there was nothing unreasonable in the way the case was advanced.
37. The Council's suggestion that the case was based on an argument that the "Class E" element was a primary use is a misrepresentation of the appellant's case in my view. There was no doubt what the use entailed as a whole and the evidence addressed the matter accordingly.
38. Finally, sufficient evidence was submitted to enable to case being made in respect of grounds (f) and (g) to be fully understood.
39. Overall, it appears to me to be a case where communication had broken down between the Council and the appellant for reasons that are not entirely clear. The appellant was unrepresented at the time the applications were submitted and subsequently invalidated. In the absence of a planning application the Council determined to issue an enforcement notice and, no doubt realising the gravity of the situation, the appellant instructed professional advice.
40. From that point onwards, the case submitted by the appellant addressed the reasons given for issuing the enforcement notice and did so in a timely fashion. There was no unreasonable behaviour in the way the appeal was made and no evidence of any additional or wasted expense for the Council. It was simply a case where there was a difference of opinion on the planning merits and the way the matter should be assessed.
41. In the absence of any unreasonable behaviour there are no grounds for an award of costs and the application shall be refused.

Chris Preston

INSPECTOR