



Costs Decision

Site visit made on 16 June 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Costs application in relation to Appeal Ref: APP/K3415/X/25/3366288 Bromley Hayes Garden Centre, Shaw Lane, Riley Hill, Staffordshire, Lichfield WS13 8HW

- 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 Land and Water for a full award of costs against Lichfield District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for commencement of development of planning permission 20/01836/COUM.
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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 (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. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples include acting contrary to, or not following, well-established case law.
3. The appellant's application for costs is made on the basis that the Council has prevented and delayed development that should clearly be permitted and has not followed established case law in light of the evidence submitted by the appellant. The appellant suggests that the Council has provided no evidential basis to determine that the information presented by it is anything other than sufficiently precise and unambiguous.
4. In an LDC the burden of proof is on the appellant, and the standard of proof is the civil standard, which is the 'balance of probabilities' or whether something is more likely than not. The PPG advises that 'in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.'
5. In its decision letter, the Council's grounds for the decision are given as 'On the basis of the evidence submitted and the assessment of this application, it is considered that the evidence submitted to lawfully determine that a commencement of works has been undertaken, together with the evidence on site, as described is

imprecise and ambiguous.’ An extract of the PPG is identified within the Council’s delegated report, with the phrase ‘sufficiently precise and unambiguous’ highlighted in bold text.

6. Whether an applicant’s evidence is sufficiently precise and unambiguous is not a free standing test which requires the Council to ask itself whether the appellant’s evidence meets some objective standard of precision and unambiguity. It requires the decision maker to ask whether the evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, (in this case) that the works had begun within the relevant period.
7. In its Costs response, the Council refers to the certificate of lawfulness being refused on the grounds of insufficient clear and unequivocal evidence to support the certificate that application 20/01836/COUM had been lawfully implemented. While the use of the term ‘unequivocal’ raises some concern in my mind as to whether a different test may have been used, the Council clarifies the burden and standard of proof within its appeal letter dated 21 July 2025.
8. Although the Council has not provided evidence itself (though I note an extract showing the extent of the HS2 safeguarded land was provided as part of its costs response), the burden of proof in an LDC is on the appellant. Reading the Council’s delegated officer report and decision notice together and taking account of the clarification provided in the Council’s appeal letter dated 21 July 2025, I am satisfied that the Council has applied the correct standard.
9. When considering the earthworks, the Council appears to have focussed on the creation of a bund and why such earthworks were needed to deliver the approved scheme. I have taken the view that it is the excavation works which have been carried out, rather than the creation of the bund itself, which is likely to have been a material operation. However, this is a matter of judgement based upon the evidence provided and my inspection of the site.
10. While I have found that the appeal should succeed, I do not believe that the Council was unreasonable in finding that the evidence was insufficient to show on the balance of probabilities that the development had been lawfully begun. The Council has explained its concerns as to whether the works carried out relate to the development approved and although I have taken a different view, this is not, of itself, evidence that the Council has not followed well established case law.
11. The Council was not unreasonable in drawing a different conclusion on the evidence, or in defending its decision through this appeal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Savage

INSPECTOR