



Costs Decision

Inquiry held on 23 June 2026

Site visit made on 24 June 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2026

Costs application in relation to Appeal A Ref: APP/G5180/X/25/3376671

Land at Waldens Farm, Crockenhill Road, Orpington, Bromley BR8 8EP

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jamie Buckley of JB Trading Limited for a full award of costs against the Council of the London Borough of Bromley.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for the removal from the land of a storage building; the placing on the land of 20 storage containers and an office building; and the use of the land for purposes falling within Class B8 (Storage and Distribution) of the 1987 Order, with associated vehicle parking, servicing and delivery space.
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Costs application in relation to Appeal B Ref: APP/G5180/C/26/3378023

Land at "Fishery", Waldens Farm, Crockenhill Road, Swanley BR8 8EP

- 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 Mr Jamie Buckley for a full award of costs against the Council of the London Borough of Bromley.
 - The inquiry was in connection with an appeal against an enforcement notice alleging operational Development comprising the siting of metal storage containers and the installation of an associated enclosure
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Decision

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

The submissions

2. The reasons given for the costs application is listed by the costs applicant as follows:
 - Issuing an enforcement notice in direct contradiction of the Council's own concurrent legal proceedings;
 - Enforcing against an outcome directly caused by the Council's own Environmental Health requirements;
 - Maintaining enforcement against a use formally approved by the Council's own Environmental Health department;
 - Failure to file any evidence in respect of Appeal A;
 - Failure to address independent third-party evidence; and

- Belated concession on the boundary enclosure after full evidence prepared.

3. I have had regard to the Council's response in reaching my decision.

Reasons

4. 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.
5. I consider each of the matters listed above in turn. However, at this stage I would deal with a general point relevant to many of the matters raised. Despite my determination of Appeal B, I have concluded that there has been a material change of use of part of the appeal site that was not lawful at the time the enforcement notice was issued. I have also concluded that 10 of the storage containers that are the subject of the enforcement notice were part and parcel of this material change of use.
6. The Council has given robust reasons for the issue of a notice alleging operational development, rather than a material change of use. Whilst I have found this allegation to be incorrect and have been unable to correct the enforcement notice to reflect the breach of planning control that I have concluded has occurred at the site, I cannot regard the Council as having behaved unreasonably by issuing an enforcement notice that is entirely related to the containers on site at the time, half of which I have found to be part and parcel of the breach of planning control that has occurred.

Issuing an enforcement notice in direct contradiction of the Council's own concurrent legal proceedings

7. I can see that the closure order (the applicant's exhibit F) prohibited access to the site by persons other than the owners; customers and visitors of JB Trading Limited and Waldens Fisheries; emergency services and authorised persons. This would not, therefore, have prohibited individuals accessing the site in association with the fish processing and wholesale use.
8. It would, however, have prohibited individuals coming to the site in connection with the separate storage use, which I have concluded has occurred at the site in breach of planning control. I say this because this storage use would have involved access to the appeal site and the 10 containers in question by individuals for purposes not associated with fish processing and wholesale.
9. Accordingly, whilst I have quashed the enforcement notice, I cannot regard the Council's issue of the notice unreasonable, not least because it relates to storage containers that are part and parcel of a use that I have found to constitute a breach of planning control.

Enforcing against an outcome directly caused by the Council's own Environmental Health requirements

10. I have no doubt that the reorganisation of activities on the site associated with the fish processing and wholesale use, including the relocation of existing on-site storage to 10 containers along the western boundary, was as a result of requirements imposed by the Council's Environmental Health Officers (EHO).

However, this was in the exercise of legislation separate to that subject of the planning regime. That the works required by the EHO were carried out in compliance with the requirements of that separate legislation does not negate the need to obtain the necessary permission under planning legislation, if indeed it is required.

11. Notwithstanding this, the use of part of the appeal site for a storage use, separate to the fish processing and wholesale businesses, was not required by the Council's EHO. The Council has not, therefore, caused this material change of use of the appeal site to have occurred. Because I have found this matter to constitute a material change of use that is not lawful, I cannot conclude that the Council has behaved unreasonably in refusing the LDC application or issuing an enforcement notice relating to storage containers that were part and parcel of this material change of use.

Maintaining enforcement against a use formally approved by the Council's own Environmental Health department

12. The extract of the notification referred to by the applicant had the title 'Notification of Grant of Full Approval of a Food Business Establishment Subject to Approval under Regulation (EC) No 853/2004'. My understanding is that this relates to food hygiene at business premises that handle animal food products. This was not issued under planning legislation.
13. This notification is relevant in the determination of the appeals. It is evidence of the operation of JB Trading Limited from the site in 2012 and supports the evidence with regard to how JB Trading Limited used the site at this time. As none of this is disputed by the Council, I cannot find that the Council had failed to have regard to this evidence.
14. This notification does not, however, fulfil the same purpose as an LDC when it was issued. Neither does it establish that the use of the appeal site at the time the LDC application was made or at the time the enforcement notice was issued (a use in breach of planning control, facilitated by storage containers that are the subject of the enforcement notice) was lawful. I say this not least because the separate storage use I have identified was not carried out by JB Trading Limited.
15. In view of this, I cannot find the Council to have behaved unreasonably in defending its position in either appeal, despite this notification having been submitted in evidence.

Failure to file any evidence in respect of Appeal A

16. From the outset, the Planning Inspectorate made clear that both Appeal A and Appeal B were to travel together, and that they would be dealt with and determined by the same Inspector. Also, that both appeals would be considered together at a public inquiry.
17. The Council provided a joint statement of case for Appeal A and Appeal B. It also provided a proof of evidence from Mr David Bord in respect of both appeals. This is common practice when appeals are dealt with and determined together. These, along with the documentation submitted with them, contained the evidence the Council relied on in respect of both appeals, including the appeal against the Council's refusal of the LDC application (Appeal A).

18. Accordingly, I find unreasonable behaviour on the part of the Council has not been demonstrated with regard to Appeal A.

Failure to address independent third-party evidence

19. The report referred to by the applicant was prepared in 1999 and records the use of the land to which the report relates as for the 'storage and distribution of fish'. Whilst this gives an indication of how the site might have been used in 1999, the report was prepared for purposes other than establishing the use of the site in land use planning terms at that time.
20. The use recorded is not consistent with my conclusions on how the appeal site was used prior to the activity in and around 2022. However, this report was prepared some 23 years previous, at a time when fish processing might not have been a material part of the activities on the site, or might not have been relevant for the purposes of the report. Nevertheless, having regard to the Council's position regarding the historic use of the appeal site, there is little to suggest that the Council has failed to have regard to it.
21. Like the notification referred to above, I acknowledge that this evidence is relevant for the purposes of both appeals. Nevertheless, and again like the notification referred to above, this does not fulfil the same purposes as an LDC at the time the report was prepared; at the time the LDC application was made; or at the time the enforcement notice was issued.
22. In view of this, I cannot find the Council to have behaved unreasonably in defending its position in either appeal, despite this report having been submitted in evidence.

Belated concession on the boundary enclosure after full evidence prepared

23. All parties are encouraged to review their respective cases at every stage of an appeal. The Council did so prior to the case management conference (CMC) and confirmed at the CMC its revised position with regard to the ground (d) appeal on Appeal B, which was made only in respect of allegation 3(ii), relating to the installation of an associated enclosure.
24. I acknowledge that this revision to the Council's case was after both the submission of the grounds of appeal submitted with Appeal B and the later receipt of the applicant's statement of case. However, the applicant notes that this revision to the Council's case on ground (d) of Appeal B was made after the receipt of all evidence, including the historical aerial images that were submitted with the applicant's statement of case. It is this evidence that is likely to have been reviewed by the Council in reaching their decision to revise their case on the ground (d) appeal. I do not, therefore, consider it unreasonable for the Council to have revised its position on ground (d) at this stage and only after having viewed this evidence.
25. Notwithstanding the above, the point at which the Council notified all of its revised position on the ground (d) appeal is not, in my judgement, late in the appeal timetable. It was in advance of the preparation of proofs of evidence, the preparation for the inquiry, and the inquiry itself. I cannot, therefore, find the Council to have behaved unreasonably in withdrawing its case on ground (d) of Appeal B when it did.

Conclusions

26. For the reasons given above, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeals process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR