



Costs Decision

Site visit made on 15 September 2026

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 September 2026

Costs application in relation to Appeal Ref: APP/T0355/X/24/3354664

Coningsby Farm, Coningsby Lane, Fifield, MAIDENHEAD, SL6 2PF

- 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 and Mrs E Davies for a full award of costs against the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of a certificate of lawful development for a soil enclosure.
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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. Pursuant to an earlier appeal and award of costs¹, the applicants claim that the Council has continued to act unreasonably and failed to substantiate its reasons for refusal through the submission of a convoluted and muddled appeal statement, including alleged 'hypothetical reasoning'.
4. The previous appeal and costs decisions are entirely separate matters; I consider here only the matters in this appeal.
5. The applicants' assertion that the Council's approach in considering the formation of the mound as a single operation to be incorrect was not made out in the appeal. In LDC appeals the burden of proof is with an appellants.
6. Given the reported findings from the enforcement investigation set out in the Council's Officer Report - that the works were taking place simultaneously, it was open to the applicants to provide sufficient evidence to counter that position. Despite the applicants' references to a 'clear factual chronology', there was little substantive evidence provided to that effect. As it was not disputed that the deposition of material was integral to the landform, it cannot be concluded that the Council's approach in its interpretation and assessment of the development as a single operation was unreasonable.
7. In relation to the applicants' contention that the engineering works were regularised, that reliance on the later appeal decisions post the 'relevant date' (16 January 2024) was itself misplaced. An application for a certificate of lawfulness relates only to a development's status on the date of its submission.

¹ APP/T0355/W/24/3354637

8. The Council's concerns in relation to whether the works could be described as 'minor' was not a hypothetical test and was not illegitimate. To benefit from the provisions of Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015, (the GPDO), the relevant development needs to be as described. As I have found, by fact and degree, the scale of development does not fall within that description. I find no unreasonable behaviour on behalf of the Council there.
9. The reason for refusal relied, in part, on the provisions of Article 3(5) of the GPDO. Even if consideration were given to the formation of the bund in conjunction with other development, it was unclear as to how the Council concluded those provisions applied.
10. The only potential reference to an unlawful building or use lay in the Council's decision as to whether the works to create the tracks and hardstand required planning permission. That considered the footprint of the agricultural building. However, that had previously been granted prior approval and there was little before me to suggest it was unlawful. Alternatively, whether or not the Council considered the bund to fall within the description of a 'building' or some use of the land was considered unauthorised, was unclear.
11. While an appeal was inevitable consequent to the other reasons for refusal, as a matter raised by the applicants, the lack of a substantive response to that claim leads me to conclude that the Council misapplied Article 3(5) of the GPDO. As a procedural error, I find that was unreasonable behaviour and, in the absence of withdrawal of that argument, led to the applicants having to continue that part of their case causing unnecessary expense in the appeal process.
12. As for the structure and content of the Council's appeal statement, aside from the Article 3(5) issue, I find this sufficiently clear in relation to the relevant matters in the appeal.

Costs Order

13. 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 the Royal Borough of Windsor and Maidenhead shall pay to Mr and Mrs E Davies, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the Council's misapplication of Article 3(5) of the GPDO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicants are now invited to submit to the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR