



Costs Decision

Inquiry held on 14, 15, 16, 29 April, 21 and 23 July 2026

Site visit made on 15 April 2026

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2026

Costs application in relation to:

Appeal A Ref: APP/E2001/C/25/3370890

Appeal B Ref: APP/E2001/C/25/3370891

Appeal C Ref: APP/E2001/C/25/3370892

Appeal D Ref: APP/E2001/C/25/3370893

Appeal E Ref: APP/E2001/C/25/3370894

Appeal F Ref: APP/E2001/C/25/3370895

Grange Farm, Laytham Road, Foggathorpe, East Riding of Yorkshire YO8 6PR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Foggathorpe Estate Limited, Mr A Savage, Mr R Anderson, Mr R Glover, Ms A Tarasenko and Mr D Fielder for a full award of costs against East Riding of Yorkshire Council.
 - The inquiry was in connection with appeals against an enforcement notice ("the notice") alleging, without planning permission, the erection of four dwellinghouses and the associated material change of use of agricultural land to residential use and associated operational development to facilitate the material change of use, being the erection of timber fencing and creation of areas of hardstanding.
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Decision

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

The submissions for Foggathorpe Estate Limited, Mr A Savage, Mr R Anderson, Mr R Glover, Ms A Tarasenko and Mr D Fielder (the applicants)

2. The costs application was outlined orally at the inquiry and set out in writing. The main thrust is that the respondent acted unreasonably by not carrying out necessary investigations in a timely and efficient manner sufficient to ensure the notice was justified by supporting evidence. This is broken down into the following:
 - The decision to issue the notice only relied on the response to a planning contravention notice (PCN) that was stated to have been made from memory and so including dates that were not clear and absolute. The allegation of the erection of 4 dwellinghouses is not supported by any evidence that was before the respondent at that time.
 - The respondent's basis for issuing the notice did not have regard to the evidence of the history of its visits to the appeal site, which support the applicants' contention that the dwellinghouses arose through a change of use of existing buildings.
 - The respondent did not recognise or sufficiently engage with the applicants' offers to co-operate, including their attempts to submit additional evidence.

- The respondent failed to produce evidence to substantiate its case that 4 dwellinghouses were erected.
- The respondent failed to review its case in the light of evidence provided to it when the appeals were made.
- The respondent's entire case in the appeal on ground (a) is based on an incorrect assessment of the operations which, if correctly considered, would have been found acceptable.

The response by East Riding of Yorkshire Council (the respondent)

3. The response was made in writing. The respondent contends that:

- The applicants' case rests on an absurd argument that it was unreasonable to rely on information that they had provided in responses to the PCN knowing the seriousness of the matter.
- Statements made by officers involved in earlier investigation or contact with the applicants were in the light of information provided to them and cannot be binding.
- Criticism of its case that 4 dwellinghouses were erected is counter to the onus on the applicants to demonstrate that it had not occurred.
- The case was kept under review, and it was not unreasonable to seek to test the applicants' evidence, including its inconsistencies, at the inquiry.
- Its case in the appeal on ground (a) is a matter of planning judgment which depends on the condition of the buildings in question.

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. There are two common threads to the applicants' case. First that, if the respondent had made greater efforts to establish the facts, it would have concluded that the development was a change of use of existing buildings, not the erection of new ones. Second, that if the respondent had engaged with emerging evidence, it would have concluded that enforcement action could no longer be taken.
6. The first thread gains some support from the records of the respondent's visits to the site and correspondence with one of the applicants, all of which appeared to accept the claim of a change of use. However, it is contrary to the facts that underpin my finding in the main decisions, that a different, and therefore new, building comprising 4 dwellinghouses now exists. It follows that the respondent did not act unreasonably in pursuing a breach of planning control comprising the erection of 4 dwellinghouses.
7. On the second thread, much has been said about the reliability of the responses to the PCN, and whether the respondent should have made further enquiries before deciding whether to take enforcement action. Even noting the caveat that the information in the PCN response was from memory, it was not unreasonable to rely

- on that information. Nor do I see any reason why the respondent should have anticipated or allowed for the significant changes in some key dates, ranging from 6 to 19 months, that emerged through later evidence.
8. Being mindful that, whichever dates might eventually prove correct, the clock was running down on when enforcement action could be taken, I see no fault in the respondent's decision to issue the notice when it did, if only to protect its position.
 9. The applicants provided the respondent with further evidence and invited it to reconsider its position shortly after the notice was issued.¹ The relevant evidence is a record of electricity payments made by the occupier of unit 3 dating back to 4 June 2021. This suggests, and has supported my finding, that unit 3 was occupied as a dwellinghouse, and thus substantially complete, a little over 4 years before the notice was issued. While the correspondence refers to similar records for units 4, 5 and 6, they do not appear to have been provided.
 10. Had those further records been provided, or requested, they would not have suggested residential occupation of all 4 units over 4 years before the notice was issued. Enforcement action could therefore still have been taken, even if not in respect of all 4 dwellinghouses. Nevertheless, the applicants would have incurred costs in appealing a different notice, with the same issues in play, so I have no clear reason to expect the costs of doing so would have been significantly different.
 11. Considering that and how the emerging evidence appears to show a shifting position on the applicants' part, I do not find fault in the respondent's decision to continue to resist the appeals. Nor do I consider it unreasonable that the respondent sought to test the contradictions in stated dates through the inquiry process. In any event, as I have found in the main decisions, because the change of use was of land, not existing buildings, the applicants' evidence did not demonstrate immunity for it.
 12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Mark Harbottle

INSPECTOR

¹ Email from Mrs Hubbard to Hazel Walsh, 3 July 2025.