



Costs Decisions

Site visit made on 23 July 2026

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 October 2026

Costs application in relation to Appeal Ref: APP/A1910/X/26/3377958

1 The Orchard, Kings Langley, Hertfordshire, WD4 8JR

- 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 Kedgling Developments for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for Internal layout changes and insertion of two doors to change the property from a dwelling house (Class C3) to 6 person HMO (Class C4).
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Costs application in relation to Appeal Ref: 6005320

1 The Orchard, Kings Langley, Hertfordshire WD4 8JR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Kedgling Developments for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of planning permission for the variation of condition 1 of planning permission reference: 23/02402/FHA, dated 11 January 2024.
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Decision

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

Preliminary Matters

2. The costs application as made by Kedgling Developments (the costs applicant) referred only to appeal reference 3377958 in its title. However, the costs application itself referred to the applications that are the subject of both of the appeals referred to in the header above. I have, therefore, determined the costs application on the basis that it relates to both of the above referenced appeals.

The Submissions

3. The applicant has set out their reasons for the costs application under the following sections:
 - The Council failed to submit any representations;
 - Internal inconsistent dual refusal;
 - The refusal to issue a partial lawful development certificate (LDC);
 - The completion argument: no statutory, case law, or policy basis; and

- The Article 3(4) position and the approved plans condition.

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

Reasons

5. 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.
6. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. The applicant has suggested that the following are examples of unreasonable behaviour on the part of the Council:
- making a decision or taking a position that is not based on relevant planning reasons;
 - failing to produce evidence to substantiate a reason for refusal;
 - failing to comply with procedural requirements, including failing to submit representations within the specified timetable; and
 - taking a position that is internally inconsistent or that no reasonable planning authority could maintain.

Council representations and delay

7. Appeal reference 6005320 followed the Householder Appeal Service (HAS) process. This process does not include the opportunity for the Council to comment on the appellant's grounds of appeal. The assumption is that the Council's case should be clear and adequately documented at the time their decision was made.
8. As for the appeal reference 3377958, this followed the normal appeal process which would have allowed the Council to make a statement at the 6 week stage, following the start of the appeal. This is not, however, mandatory. If the Council is satisfied that their officer report prepared in respect of the application subject of the appeal adequately sets out the case it would like to make, following a review of the applicant's grounds of appeal, they need not prepare a 6 week appeal statement.
9. I am satisfied that the Council's officer reports prepared in respect of both of the applications that are the subject of these appeals sets out clear and concise reasons why the applications should be refused. Whilst I have not agreed with some of the points made, this does not mean that the Council has failed to produce evidence to substantiate each reason for refusal on appeals.
10. In view of the above, the lack of an appeal statement from the Council does not mean that it has failed to provide relevant information within statutory time limits, delayed in providing information or failed to adhere to deadlines, as referred to in the PPG.
11. The delay in the submission of the appeal questionnaire in the 3377958 appeal is not acceptable. However, the applicant has not suggested how they were disadvantaged by this. This contained information, most of which was already available to the applicant and was submitted in advance of the deadline for the submissions of appeal statements.

12. That it was necessary for the applicant to respond in detail to third party representations, which might have included caselaw not relied on by the Council, does not demonstrate unreasonable behaviour on the part of the Council.
13. The applicant refers to the need for them to prepare a full statement of case and final comments, as well as respond to the comments of interested parties. Even if any of the above were a demonstration of unreasonable behaviour on the part of the Council, I cannot see that the expense of preparing the applicant's evidence in respect of both appeals is wasted. Indeed, it was entirely necessary in order to respond to the Council's officer reports and interested party representations.

Dual refusals

14. The applicant refers to the 'proposed openings' in this part of their costs application. Only the door openings proposed in the side elevation of the rear outrigger are common to both appeals. As I have dismissed both appeals insofar as they relate to the two doors, I simply cannot agree that the Council were unreasonable to refuse both of the applications subject of these appeals.
15. I have agreed with the Council, that it was right to refuse these applications insofar as they relate to the two doors. Whilst I have not entirely agreed with the Council's reasons for the refusals, their approach to both cases is broadly consistent with mine. The Council have given robust reasons to demonstrate why it says that both applications should be refused insofar as they relate to the door openings.
16. In short, unreasonable behaviour has not been demonstrated by the Council's refusal of both applications.

The completion argument and the Article 3(4) position

17. I consider both of these points together as they relate to the same matter and are relevant only to the LDC appeal.
18. In its officer report the Council point to the plans condition (condition 1) of the 23/02402/FHA permission. It says that it requires the development to be carried out in accordance with the approved plan. I can see that the Council refer to the works as not having been 'fully completed'. Nevertheless, it notes that there is a 'shell of the approved building'. It is for this reason that the Council say that 'the requirement to build in accordance with the approved plans remains in place' and that the proposed openings 'would be contrary to a condition imposed by a planning condition'. These are the circumstances set out in Article 3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order), where it informs that nothing in the Order would be permitted.
19. I acknowledge that the officer report goes on to say that 'only once the development has been **completed** would the approved plans condition be discharged' (my emphasis). Whilst the condition requires the development to be 'carried out', rather than completed, to my mind this is of little consequence in this case. As I note in my 3377958 appeal decision, a requirement to carry out a development in accordance with approved plans imposes a conditional, rather than absolute obligation. Nevertheless, the requirements of condition 1 are that, if a development is undertaken, it must be undertaken to its completion in accordance with the approved plan.

20. Notwithstanding the above, the applicant did not make the case that the condition has been discharged and that the development has been carried out in accordance with the approved plan.
21. I acknowledge that I have not agreed with the Council, that the 23/02402/FHA permission together with its plans condition are the relevant permission and condition in this case. Nevertheless, I have agreed with the Council's approach to the matter of the development not having been carried out in accordance with the relevant plans condition and that this engages the provisions of Article 3(4) of the 2015 Order.
22. There is basis for the Council's approach in the 2015 Order, which is Article 3(4). This approach is also supported by the Inspector in the previous appeal¹, which is noted by the Council in its officer report. I have had regard to that appeal decision and can agree that the Inspector's findings align with this approach.
23. For the reasons above, I cannot conclude that the Council has behaved unreasonably in its approach in its refusal of the LDC application subject of appeal 3377958, with regard to the matter of completion of the development and the application of Article 3(4) of the 2015 Order. That the Council has not referred to caselaw or any national guidance in support of its position does not change this conclusion.

Split decision

24. In suggesting that the Council behaved unreasonably by not issuing an LDC for the proposed change of use, the applicant points to the guidance at paragraph 009 of the Planning Practice Guidance on Lawful development certificates. I acknowledge that the guidance indicates that the description of the matter for which the LDC is sought may be modified in an application made under both section 191 and 192 of the 1990 Act. Although this is not explicit in the guidance, an applicant may modify the description of their proposal on an LDC application, perhaps following advice from the Council. However, as I note in my decision on the 3377958 appeal, there is a clear difference between section 191(4) and 192(2) of the 1990 Act with regard to the matter for which a certificate can be granted. I cannot, therefore, agree with the applicant, that there is a unilateral power to modify or substitute the description of a proposal in order to grant an LDC on a section 192 application. Neither can I agree that the provisions of section 195 support their interpretation. The reference in section 195(4) of the 1990 Act to a modification or substitution of the description in the application must be to powers to modify or substitute the description under section 191. There are no equivalent powers to modify or substitute the description under a section 192 application.
25. Notwithstanding the above, the principal matter in this case was whether an LDC could be granted under section 192 for part of what is proposed. On this I have found that the provisions of section 192(2) of the 1990 Act would allow for a certificate to be granted where only part of what is proposed is found lawful. However, I have said that this is only where the element found lawful is genuinely severable from the other elements of the proposal.

¹ Appeal Decisions APP/A1910/X/24/3338702, APP/A1910/W/23/3326421, APP/A1910/W/24/3342737, APP/A1910/W/24/3343237 & APP/A1910/W/24/3349857.

26. In my decision on the 3377958 appeal I find that the description of what is proposed in the LDC application could be read as a single composite proposal, where the three elements of what is proposed are not severable. Because of this, and although this point is not part of the Council's case, I have sympathy with the Council's refusal of the LDC application in its entirety.
27. It is only having had regard to the applicant's appeal submissions that I am satisfied that, on balance, the elements of the proposal on the LDC application are severable, despite how they are described in the LDC application, and that I was able to issue a certificate for part of what is proposed. I am not satisfied that this clarity was before the Council when it determined the LDC application.
28. For these reasons, I do not consider the Council to have demonstrated unreasonable behaviour by not issuing a certificate on the application subject of the 3377958 appeal for the change of use proposed.

Conclusions

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

J Moss

INSPECTOR