



Costs Decision

Site visit made on 15 September 2026

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th October 2026

Costs application in relation to Appeal Ref: APP/J2210/C/25/3363571

28-30 St. Peters Street, Canterbury, Kent CT1 2BQ

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Paul Roberts Development (St Peters) Ltd for a full award of costs against Canterbury City Council.
 - The appeal was against an enforcement notice alleging without planning permission, the construction of roof top plant on the Land.
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Formal 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. Paragraph 049¹ of the PPG highlights the examples of substantive unreasonable behaviour by Councils where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that they failed to act in a proportionate way, serving the enforcement notice prior to receiving information which may have assisted in understanding the development.
4. The applicant further contends that the Council failed to consider whether conditions could have been imposed in order to ensure that the planning permission² granted was undertaken within a suitable timeframe. Councils are at risk of an award of costs if they unreasonably defend appeals on a planning ground capable of being dealt with by condition, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The Council states the enforcement notice was issued in response to the alleged breach of planning control, involving the installation of rooftop plant. The Council highlighted that no planning permission had been issued at the time of the notice, and considered it expedient to serve an enforcement notice, based on the harm to the character and appearance of the Canterbury City conservation area and nearby heritage assets.
6. The relevant four year period for taking enforcement action in respect to operational development was approaching, thus the Council sought to protect its position by serving an enforcement notice, as the development appeared as substantially complete. This is not an unusual occurrence. Whilst I have reached an alternative

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

² Canterbury City Council Planning Ref: CA/25/00890

conclusion on the timings of the enforcement notice, I find that the Council was justified in serving a notice in an attempt to prevent immunity through passage of time. In this regard I do not find that the Council has acted unreasonably.

7. However, my decision has been based on the information supplied at the appeal stage, where the applicants submitted a robust evidential base in respect to the timeframe of when the development was installed. I found the evidence compelling, and so on the balance of probability, concluded that as the development had been in situ prior to the relevant time limit as set out in section 171B of the 1990 Act, it was immune from enforcement action through passage of time.
8. As part of the appeal the Council were made aware that the development consisted of a smoke extraction system, a vital safety component in the event of a fire. The applicant has submitted various correspondence with the Council where this issue has been explained during the appeal stage. Furthermore, during the appeal stage the applicant submitted a planning application to provide screening together with retrospective permission for the installation of the rooftop smoke extraction plant. This was subsequently granted planning permission by the Council in July 2025.
9. The correspondence further highlights that the applicant requested that the enforcement notice was withdrawn by the Council both prior and post the grant of planning permission. The applicant also suggested that the use of planning conditions could ensure that the screening subject to the planning application was undertaken within a suitable time scale. The Council refused to undertake either of these suggestions, maintaining the notice would ensure that the works were carried out and the withdrawal of the notice would have removed the only mechanism available to secure compliance.
10. The PPG³ indicates it can be appropriate to provide shorter time periods imposed by condition, where it would encourage the commencement of development where non-commencement would have negative impacts. In granting the planning permission, the Council accepted both the development subject to the notice and proposed mitigation measures. Given this acceptance, a planning condition could have been attached to secure a lesser time frame, thus enabling the works to construct the screening to be completed at an agreed stage.
11. A condition could have provided sufficient certainty to ensure that the necessary screen was implemented, and further enforcement powers should the condition not be complied with. The Council could have accepted this position earlier and potentially withdrawn the notice and therefore has acted unreasonably in this respect and thus caused the applicant unnecessary wasted expense in doing so.
12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 Canterbury City Council shall pay to Paul Roberts Development (St Peters) Ltd, the costs of the

³ Use of conditions Paragraph: 027 Reference ID: 21a-027-20140306

appeal proceedings described in the heading of this; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Canterbury City Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Robert Naylor

INSPECTOR