Planning Inspectorate

Costs Decisions

Site visit made on 15 October 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2026

Costs applications in relation to Appeal A Ref: APP/C3810/C/24/3350946 and Appeal B Ref: APP/C3810/C/24/3350947
79 Lincoln Avenue, Rose Green, Aldwick, Bognor Regis PO21 3EW

- The applications are made under the Town and Country Planning Act 1990 (as amended) (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Lee Penson and Ms Samantha Penson nee Thackray for a full award of costs against Arun District Council.
- The appeals were against an enforcement notice alleging Without planning permission and within the last 10 years, the material change of use of the Land and associated operational development, by the erection and use of a building that creates an independent, separate, and self-contained, primary residence.

Decision

1. The applications for awards of costs are allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. The enforcement notice required the demolition of an outbuilding (the Building) said to have been erected as a dwelling from the outset in association with a material change in the use of the land. Although the description of the alleged breach in the notice referred to the erection of the Building as being associated with the material change of use, the Council's expediency report and statement of case raised claims that the Building was not substantially complete more than 4 years before the notice was issued. It should have been clear to the Council that the Building was substantially complete more than 4 years before the notice was issued, and that any subsequent extensions did not comprise part of the single operation undertaken when erecting the Building. On the limited submissions from the Council in this regard, it was unreasonable for the Council to state otherwise, which resulted in the applicants incurring unnecessary or wasted expense in respect of their appeals on ground (d).

4. The notice was issued shortly after the Court of Appeal handed down its judgment in *Caldwell*[1] which clarified the *Murfitt*[2] principle. The Council should have been aware of the implications of *Caldwell* when issuing the notice, yet it was not referred to in the expediency report, which instead applied an outdated approach to the *Murfitt* principle. The Council's submissions are silent on this matter, despite the

[1] *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467
[2] *Murfitt v SSE & East Cambridgeshire DC* (1980) 40 P. & C.R. 254, [1980] 5 WLUK 47

opportunities to clarify its position. This was mainly relevant to the appeals on ground (f), as the Lawful Development Certificates issued by the Council in respect of the site did not confirm the lawfulness of the Building or the material change of use for the reasons set out in my appeal decision.

5. It was therefore unreasonable for the Council to issue the notice requiring the removal of the Building following the judgment in *Caldwell*. The steps required to be taken by the notice exceeded what was necessary to remedy the unauthorised material change of use of the land for the reasons explained in my appeal decision. The applicants incurred unnecessary or wasted expense in addressing this point in their submissions on the appeals under ground (f).

6. The Council did not share its expediency report relating to the enforcement notice in advance of its submission of the appeal questionnaire. This was not unreasonable as it did not prevent the applicants from submitting complete grounds of appeal. They then had sufficient opportunity to prepare their statement of case following receipt of the expediency report as an attachment to the appeal questionnaire.

7. The reasons stated for issuing the notice remained relevant, despite my findings of no conflict with the development plan in respect of 2 of them. Furthermore, the case presented by the Council to support the reasons stated for issuing the notice was not unreasonable even though part of it focused on the erection of the Building.

8. I have dealt with the evidence relating to claimed interdependence in my appeal decision, including the statutory declaration of Susan Clinton. The Council's reliance on subsequent evidence provided by Sophie Clinton in a planning contravention notice (PCN) response (where the PCN had been served on her mother, Susan Clinton) was not unreasonable. Moreover, the Council states it had spoken to Susan Clinton in person and I have no reason to doubt this. There is a family dispute, and mental health issues have been referred to, yet there was no need for the Council to provide further details about what information it holds in these regards. The evidence it has provided was sufficient to justify the notice being issued, with regard to section 172(1) of the Act, and to defend the appeal.

9. I have corrected and varied the notice for the reasons given in my appeal decision and I was able to do so without causing injustice to any party. Although the notice contained errors that the Council should have identified before it was issued, those errors were readily apparent from the notice read as a whole and could be identified and corrected without difficulty. Other than in respect of the appeals on grounds (d) and (f), they did not cause the applicants to incur unnecessary or wasted expense. Accordingly, they do not justify an award of costs.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's references to the Building not being substantially complete 4 years before the notice was issued and the failure of the Council to apply the findings in *Caldwell* when drafting the requirements of the notice. These points had to be addressed by the applicants in respect of their appeals on grounds (d) and (f). A partial award of costs is therefore warranted.

Costs Order

11. 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 Arun District Council shall pay to Mr Lee Penson and Ms Samantha Penson nee Thackray, the costs of the appeal proceedings described in the heading of this decision limited to those costs reasonably incurred in addressing the Council's case concerning the date of substantial completion of the Building under ground (d), and the removal of the Building under ground (f), as identified in this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicants are now invited to submit to Arun District Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR