Planning Inspectorate

Costs Decision

Inquiry held on 22 to 25 September 2026 and 29 September to 2 October 2026

Site visit made on 24 September 2026

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2026

Costs application in relation to Appeal A Ref: APP/F2605/C/25/3375850 Cherry Tree Farm, Cherry Tree Lane, Stow Bedon NR17 1BY

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wayland Farms Limited for a full award of costs against Breckland Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging:

  On 13th August 2019 planning permission was granted under reference 3PL/2017/0878/F to expand pig production to 6990 pigs, demolish some existing buildings (10 no) and erect 7 new pig sheds with roof fan ventilation and a new roof covering over existing manure store, subject to conditions. Condition 2 required that the development must be carried out in strict accordance with the application form, and approved documents and drawings as set out in the table at the end of the decision notice.

  It appears to the Council that the condition has not been complied with because the new pig sheds authorized by permission 3PL/2017/0878/F have not been constructed in accordance with plans "Proposed and Existing South and East Elevations, ref 4", dated June 2017 and "Proposed and Existing North and West Elevations, ref: 5", dated June 2017. Both plans were approved under planning application 3PL/2017/0878/F dated 13 August 2019 and are listed under Condition 2 of that consent.

Costs application in relation to Appeal B Ref: APP/F2605/W/25/3375849 Cherry Tree Farm, Cherry Tree Lane, Stow Bedon NR17 1BY

- 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 Wayland Farms Ltd for a full award of costs against Breckland Council.
- The inquiry was in connection with an appeal against the refusal of planning permission to 'expand pig production to 6990 pigs. Demolish some existing buildings (10No.) and erect 7 new pig sheds with roof fan ventilation, new roof covering over existing manure store' without complying with a condition attached to planning permission Ref 3PL/2017/0878/F, dated 13 August 2019.

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. The applications are made on the basis of alleged unreasonable behaviour by the Council in relation to both the enforcement appeal and the planning appeal.

Appeal A

Failure to Withdraw the Enforcement Notice

4. The principal issue concerns the Council's decision to maintain and defend the enforcement notice after receipt of the applicant's detailed legal and factual submissions dated 1 August 2025.

5. Those submissions squarely raised the question of whether the development, properly interpreted against the terms of the original permission, fell within the scope of that permission and whether enforcement action could lawfully be maintained. They also provided detailed evidence concerning the chronology of development and the applicant's immunity case.

6. Whilst a local planning authority is entitled to disagree with submissions advanced by an applicant, the question for the purposes of costs is whether it acted reasonably in continuing to pursue its position. In this case I am not persuaded that it did.

7. The evidence demonstrates that, although the Council considered the applicant's legal submissions, it did not adequately reassess its enforcement position in light of the substance of those submissions. In particular, the Council continued to focus primarily upon issues concerning implementation of the original permission and the chronology of development, without first resolving the separate legal question of what development the permission, properly interpreted, authorised. The applicant consistently identified that distinction throughout the appeal process.

8. The Council contends that the issues were complex and relied, amongst other matters, upon the authorities *Handoll and Suddick v Warner Goodman & Streat (a firm) and others* [1994] EWCA Civ 42; (1995) 70 P&CR 627 and *Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions[2002] EWHC 1264 (Admin)*; [2003] JPL 358. However, those authorities are principally concerned with the consequences of departures from approved plans and the implementation of permissions. They did not remove the need for the Council to consider whether the enforcement notice remained legally well-founded once challenged by detailed submissions addressing the scope and interpretation of the permission itself.

9. By the time of the applicant's August 2025 submissions, the Council had been provided with detailed legal analysis founded on well-established authorities governing the interpretation of planning permissions, including *Trump International Golf Club Scotland Ltd & Another v The Scottish Ministers* [2015] UKSC 74, *Lambeth LBC v SSCLG* [2019] UKSC 33 and *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30. Those cases establish that the interpretation of a planning permission is ultimately a question of law, requiring an objective assessment of the permission read in its proper context. Faced with those submissions, a reasonable authority would be expected to undertake a careful reassessment of whether the legal basis for the notice remained sound. The evidence before me does not demonstrate that such a reassessment occurred.

10. I accept that the issues arising were not straightforward and that reasonable disagreement can exist as to the interpretation of a planning permission. Nor is a costs award justified simply because an authority advances an interpretation that is ultimately not accepted. However, the conduct under consideration here is not the

mere maintenance of an alternative interpretation. Rather, it is the failure adequately to investigate and reassess the legal basis of the enforcement case after detailed submissions had been received identifying why the notice was said to be unsound in law.

11. I also accept that local planning authorities are not required to accept every legal argument advanced by an appellant. Equally, complexity or legal uncertainty will not, of itself, render it unreasonable for an authority to maintain a contrary position. Nevertheless, the evidence before me demonstrates that the Council continued to defend the notice without adequately demonstrating that it had properly reconsidered the legal foundations of its case in light of the authorities and analysis placed before it. It is that failure of reassessment, rather than the ultimate outcome of the legal dispute, which I find to have been unreasonable.

12. Paragraphs 48 and 49 of the PPG make clear that local planning authorities are at risk of an award of costs where more diligent investigation would have avoided an appeal and where authorities act contrary to, or fail to follow, well-established case law. In this case, the Council failed to demonstrate that it had adequately reassessed its enforcement position in light of the established authorities governing the interpretation of planning permissions and the detailed legal submissions placed before it. Had such a reassessment been undertaken, the continued defence of the enforcement notice would have required careful reconsideration. I therefore conclude that the Council acted unreasonably in maintaining the enforcement notice following receipt of the applicant's August 2025 submissions, thereby causing the applicant to incur unnecessary expense.

13. This was not a case in which the Council merely preferred one reasonably arguable interpretation over another. Rather, it continued to pursue enforcement action without adequately reassessing whether the legal basis for that action remained sustainable once detailed submissions and authorities challenging its position had been placed before it.

Failure to Withdraw the Enforcement Notice Following the Council's March 2026 Position

14. Even if I were wrong on the above point, I find that the Council’s behaviour became independently unreasonable by March 2026.

15. The Council's Statement of Case confirmed that, following receipt of additional environmental information, it did not wish to resist the grant of planning permission for the development as built, subject to conditions. Having reached that position, the Council nonetheless continued to maintain the enforcement notice.

16. The Council did not provide a convincing explanation as to why enforcement action remained necessary once it had accepted that the development was acceptable in planning terms, subject to conditions. In particular, it failed to identify any substantive planning purpose that would be served by continuing to pursue the notice. The Council called no substantive planning evidence opposing the planning appeal and no persuasive evidence supporting the alleged planning harm relied upon in the notice.

17. The Council's position effectively sought simultaneously to accept the development through conditions whilst continuing to pursue enforcement action directed at substantially the same development. In the circumstances of this case, that

approach was difficult to reconcile and I find that it amounted to unreasonable behaviour. The Council called no planning witness seeking dismissal of Appeal B and produced no substantive evidence capable of demonstrating that the alleged harm relied upon in the notice justified the continuation of enforcement action.

18. The Council's continued defence of the notice caused the applicant to incur unnecessary appeal costs that would otherwise have been avoided.

Positive Deception Allegation

19. I also find that the Council acted unreasonably in advancing and maintaining its allegation of positive deception.

20. Positive deception is a serious allegation capable of disapplying the statutory time limits, which would otherwise apply to enforcement action. It requires both a proper evidential basis and careful application of the relevant legal principles before being advanced. Nevertheless, the allegation remained a central component of the Council's case until the first day of the Inquiry, when it was withdrawn.

21. The material before me demonstrates that the applicant repeatedly challenged the basis of the allegation and invited its withdrawal. In doing so, the applicant consistently maintained that its case concerned the proper legal interpretation of the original planning permission and whether the development as built fell within its scope. Despite this, the Council continued to pursue the allegation through its Statement of Case and proofs of evidence, thereby requiring the applicant to prepare detailed witness evidence and legal submissions in response.

22. The allegation stemmed in large measure from the Council's failure to properly distinguish between two separate matters: first, the legal question of what the original permission authorised; and secondly, the factual question of whether any party had sought deliberately to mislead the Council. The former issue was governed by established authorities on the interpretation of planning permissions, including Trump, Lambeth and Hillside. The Council did not demonstrate any adequate evidential basis for converting a dispute concerning the legal interpretation of the permission into an allegation of positive deception.

23. I have considered the Council's reliance upon the response to the Planning Contravention Notice and its submission that the applicant's later evidence presented a materially different factual chronology. However, whilst those matters may have justified further investigation of the circumstances surrounding the development, they did not, by themselves, provide a sufficient evidential basis for maintaining a serious allegation of positive deception through to the Inquiry. The existence of factual disputes regarding implementation and chronology did not relieve the Council of the need to demonstrate a proper evidential foundation for an allegation capable of disapplying the statutory immunity provisions.

24. The timing of the withdrawal is significant. No material evidential development occurred during the Inquiry which explains why the allegation could only be abandoned at that stage. Rather, the relevant evidence and legal authorities had been available to the Council for a considerable period beforehand. The withdrawal therefore reflected a reassessment that ought reasonably to have taken place much earlier in the appeal process.

25. In these circumstances, I am satisfied that the Council maintained the allegation beyond the point at which a reasonable authority, properly directing itself to the evidence and the applicable legal principles, ought to have recognised that it could not properly be sustained. This was not merely a matter of professional judgment on which reasonable views differed. Rather, it involved the continued pursuit of a serious allegation after repeated challenges to its legal and evidential basis and in circumstances where the Council had failed adequately to reassess the allegation in light of the established authorities underpinning the applicant's case. Such conduct is capable of amounting to the type of unreasonable behaviour identified in paragraph 49 of the PPG, namely acting contrary to, or failing to follow, well-established case law.

26. The late withdrawal caused the applicant to incur unnecessary expense in the preparation of witness evidence, legal submissions, documentary analysis and Inquiry preparation directed to an allegation that ought not reasonably to have remained in dispute. I therefore conclude that the Council's conduct constituted both substantive and procedural unreasonable behaviour within the meaning of the PPG.

Failure to Adequately Investigate and Define the Alleged Breach

27. I further conclude that the Council failed adequately to investigate and define the alleged breach forming the basis of the enforcement notice.

28. A central plank of the Council's case concerned the alleged requirement for 'solid walls'. However, the Inquiry revealed a significant degree of uncertainty regarding what that expression meant and how compliance could be assessed.

29. The evidence demonstrates that the applicant repeatedly sought clarification from the Council, including during preparation of the Statement of Common Ground. No clear explanation was forthcoming.

30. Matters were further complicated by the evolution of the Council's position from "solid walls" to "predominantly solid walls", notwithstanding the absence of any objectively identifiable basis for determining compliance with such a requirement. The Council ultimately accepted that some form of ventilation openings would necessarily be required.

31. The Inquiry exposed significant uncertainty at the heart of the Council's case. Indeed, the Council accepted matters that fundamentally undermined the practical effect of the notice as drafted.

32. Paragraph 48 of the PPG requires adequate prior investigation and accurate enforcement action. Those standards were not met in this instance.

33. The applicant was required to obtain additional expert evidence and devote considerable time to rebutting a case that had not been properly defined. The resulting expense was unnecessary and directly attributable to the Council's conduct.

Appeal B

Necessity of the Planning Appeal

34. Had the Council reasonably reassessed its position following the applicant's August 2025 submissions, the enforcement notice would not have continued in the form ultimately pursued. In those circumstances, the applicant would have been able to consider alternative mechanisms for regularising the development without the need simultaneously to defend ongoing enforcement proceedings.

35. I acknowledge the Council's submission that alternative proceedings, including any application for a certificate of lawfulness, may themselves have generated further dispute concerning the status of the development. However, I am satisfied that a substantial proportion of the costs incurred in relation to Appeal B flowed directly from the continuation of the enforcement proceedings and the need for the applicant to respond to the Council's enforcement case. The possibility that other legal procedures may subsequently have been required does not detract from my conclusion that those costs were incurred as a direct consequence of the Council's unreasonable conduct.

36. I acknowledge that Appeal B has not succeeded. However, that does not determine whether the costs incurred in relation to that appeal were incurred as a result of the Council's conduct. The appeal was pursued against the background of continuing enforcement action founded upon the Council's characterisation of the breach. A substantial part of the work undertaken by the appellant in relation to Appeal B overlapped materially with, and flowed directly from, the issues generated by the continued defence of the enforcement notice.

37. Furthermore, by March 2026 the Council had indicated that it did not oppose the grant of planning permission for the development as built, subject to appropriate conditions. Whilst that position did not resolve the separate legal issues which ultimately led to the dismissal of Appeal B, it significantly undermined the planning basis for continuing the dispute in the manner pursued. The Council nevertheless maintained the enforcement proceedings and thereby contributed materially to the continuation of the appeal process and the costs incurred.

38. In these circumstances, I am satisfied that a substantial proportion of the costs associated with Appeal B were incurred as a direct consequence of the Council's unreasonable conduct in continuing to maintain its enforcement position. I therefore conclude that those costs were unnecessarily incurred for the purposes of the PPG.

Procedural Conduct and Postponement of the Inquiry

39. Finally, I find that the Council acted unreasonably in relation to the notification and consultation process associated with the updated Environmental Statement.

40. The evidence demonstrates that interested parties were not properly notified within the required timeframe and that those failures ultimately led to the postponement of the Inquiry.

41. The Council attributes the difficulty to an IT error. However, the relevant question is not whether the failure was deliberate but whether it resulted from unreasonable conduct and caused unnecessary expense.

42. The applicant had actively assisted with the notification process and proposed wording for the necessary notifications. Despite this, the Council failed to ensure that the consultation exercise was undertaken correctly.

43. The consequence was a substantial delay to the Inquiry and the duplication of work by the applicant's professional team.

44. The additional expense resulting from the postponement was unnecessary and directly attributable to the Council's procedural failings.

Environmental Statement

45. The applicant also contends that the Council acted unreasonably in seeking extensive additional environmental information.

46. I do not agree. Given the scale of the development and the environmental issues raised during the appeal process, I am satisfied that the Council was entitled to seek further environmental information and to satisfy itself that sufficient information was available before the appeals were determined.

47. In reaching that conclusion, I have also had regard to the representations received from interested parties concerning environmental effects, the environmental issues that remained under consideration at the time, and the Council's obligation to ensure that sufficient environmental information was available before the appeals were determined. Whilst the applicant considers that certain requests went beyond what was strictly necessary, I am satisfied that the Council's conduct in seeking further information was within the ambit of reasonable professional planning judgment in the circumstances of this case

48. Whilst I accept that some of the information ultimately proved to be of limited relevance, and whilst the applicant incurred significant expense in responding to those requests, I am not persuaded that the Council's actions exceeded the bounds of reasonable professional judgment.

49. I therefore do not find unreasonable behaviour on this ground.

Conclusion

50. Taken individually, each of the findings of unreasonable behaviour identified above is capable of justifying an award of costs. Taken cumulatively, they demonstrate a sustained pattern of unreasonable behaviour throughout the enforcement and appeal process.

51. I conclude that the Council's unreasonable behaviour, identified above, directly caused the applicant to incur unnecessary or wasted expense throughout the appeal process. In particular, I am satisfied that the substantial majority of the costs incurred in relation to both Appeal A and Appeal B flowed directly from that conduct. Having regard to the scale, cumulative effect and consequences of the Council's unreasonable behaviour, a full award of costs is warranted.

Costs Order

52. 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 Breckland Council shall pay to Wayland Farms Ltd, the costs of the appeals proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

53. The applicant is now invited to submit to Breckland 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.

A Walker

INSPECTOR