Planning Inspectorate

Costs Decision

Hearing held on 10 November 2026

Site visit made on 11 November 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2026

Costs Application in relation to Appeal Ref: APP/G1630/C/26/3378929
Unit 2, Elmstone Business Park, Tewkesbury Road, Elmstone, Hardwicke, Cheltenham GL51 9SY

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Clavell & Hind for a full award of costs against Tewkesbury Borough Council.
- The appeal was against an enforcement notice alleging: Without planning permission, the erection of a building and associated operational works for use as a mixed use brewery and drinking establishment.

Decision

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

The submissions for the Applicant

2. The costs application was submitted in writing. Final comments were also submitted in writing. I therefore only need summarise the basis of the application here.

3. Accordingly, the application is made for a full award of costs against the Council or, in the alternative, a partial award. It is contended that the Council acted unreasonably by: (1) Issuing a defective notice and failing to rectify it when it was reissued; (2) Withdrawing its reasons for opposing the grant of permission at a late stage; (3) Opposing the development on flood risk and retail/town-centre policy grounds.

4. A notice had been issued on 3 March for which the appellant had highlighted a number of problems with its drafting. The Council then withdrew the notice as it stated that the fee specified for the deemed planning application was incorrect. As a result, the appellant made an application for costs. The Council then issued the current notice the day before a meeting was scheduled with the appellant that was materially identical, save for the specified fee. The Council was therefore aware of defects in the notice and had the opportunity to correct them. It however then asked for the alleged breach to be corrected in its statement of case even though it was positively relying on the fact that the terms of the notice had not changed as a defence to the costs application. It has not explained why it did not get the notice right in the first place if its intention was to allege an unauthorised use. The failure to get it right caused the appellant wasted or unnecessary expense, e.g. the costs of, and associated with, addressing these points in the Grounds of Appeal and Statement of Case.

5. The Council now agrees that planning permission can properly be granted and hence no longer relies on any of its original reasons for issuing the notice but justifies this on an alleged failure of the appellant to submit a planning application and an alleged material change in national planning policy. However, the appellant did submit an application, but this remains invalid without cogent explanation and there have been no material changes to relevant planning policy. The Council also now accepts that the development accords with the objectives Policies EMP4 and EMP5 of the LP. Accordingly, the Council acted unreasonably in only withdrawing its reasons for issuing the notice at a late stage.

6. In addition, the Council granted permission for the building to be used for B1 and/or B8 purposes. B1 is now within Class E. Therefore, the Council had already authorised development capable of accommodating shops, restaurants, cafés, offices and other main town-centre uses at this location without a further grant of planning permission. It was inconsistent and unreasonable therefore for it to object to the development on the basis that it involved another town centre use. Likewise, the flood risk reason was also always unreasonable. As the Council now accepts, the buildings are situated entirely within Flood Zone 1, and it is the existing access to the Business Park which passes through Flood Zone 3. Although the drinking establishment is classified as *more vulnerable*, the Council identified no evidence that its use of the existing access would give rise to any unacceptable flood risk, still less one incapable of being addressed through appropriate conditions or an evacuation plan. The Council asserted that enforcement action requiring demolition was expedient and proportionate. That was unreasonable.

7. If the Council had considered matters properly from the outset, it would have reached the position it has now reached, and therefore it is unlikely the notice would have been issued and so a full award of costs is justified.

The response for the Council

8. This was similarly submitted in writing and thus I need only summarise it here.

9. A chronology of events is provided. The dates are then not disputed by the appellant.

10. It is stated that the notice is not a nullity and has not been determined to be defective. The parties agreed a compromise position and agreed injustice did not arise. These were far more extensive than the Council had previously suggested, and no determination could be made on the Council's suggestion because of the appellant's conditional withdrawal. The appellant cannot benefit from the agreement in respect of the outcome of the appeal whilst simultaneously asking for costs as if the notice were defective.

11. The Council's position on ground (a) is justified by the appellant's repeated failure to regularise development over a two-year period; new evidence the appellant submitted as part of this appeal; and, an altered national policy position.

12. It was only after the provision of the acoustic assessment that the Council could be satisfied that the brewery use was capable of falling within Class E and not Class B2 of the Use Classes Order. It was only owing to this that the Council was able to conclude that there was a fallback position which included a range of town centre uses.

13. Similarly, it was only on the provision of an updated flood risk assessment and technical note that the Council could be satisfied there was no risk of such harms. This could have been provided at any point within the two-year period between first being informed of the Council's view of the breach and first notice being served.

14. Policy S5 of the new Framework then directs that previously developed land such as the appeal site benefits from a presumption in favour of sustainable development, which was not the case previously. This change means that policy RET4 of the LP is now materially inconsistent with the Framework.

15. The Council agreed planning permission should be granted at the earliest position it was able to do so. The notice was not issued in a vacuum and was the culmination of two-years of effort to get the appellant to regularise the position. There is then no causative link between unreasonableness and alleged increased expense. It is not known how the grounds (b) and (c) appeals would have been determined and thus it is impossible for the appellant to establish wasted expense.

16. There has been neither any unreasonable behaviour on the part of the Council, nor wasted expense caused by any such behaviour and the application should be rejected.

Reasons

17. 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.

18. The Council issued the notice following the withdrawal of a previous notice. In doing so, it may or may not have been trying to protect its position in respect of a costs application pertaining to that matter.

19. Either way, the appellant raised a number of issues with the drafting of the notice. The Council subsequently proposed a correction to the notice relating to use. In the event, the main parties were able to agree far wider reaching corrections to the notice to facilitate their wider agreements and common ground. It was confirmed that injustice would not arise. I therefore did not need to come to a finding as to whether the notice as originally issued was defective, only that I was content to accept the agreement of the main parties as substitutions for the reasons I gave.

20. In any event, it is not unusual for a notice to require correction. Whilst the appellant has incurred costs in raising what it considered to be issues with the notice, I am simply not persuaded that the Council acted unreasonably in issuing the notice in the form that it did, even though there had been a previous notice and meeting held between the main parties. I am also mindful that the Council has been willing to facilitate wide ranging agreements with the appellant throughout this appeal process, which has saved considerable time and expense.

21. Whether or not the appellant considers the reasons surrounding the invalidity of a planning application to be cogent, it concedes that even if that had been granted planning permission, a further planning permission would still need to have both been made and granted. I am also mindful that planning issues were first brought to the attention of the appellant some two years ago, and no solution had been found.

22. It therefore seems inevitable to me that an enforcement notice to remedy a breach of planning control would be issued even though there were positive factors in support of the development. It is also telling that the agreement of the main parties includes planning conditions and thus if the Council had not issued the notice, the development would have continued unfettered, which would lead to planning harms, otherwise there would have been no need to agree to planning conditions.

23. It was then only on 16 July 2026 that the appellant provided an acoustic assessment. This meant the Council was able to accept a fallback position which included a range of town centre uses. I consider it was correct to await this assessment before doing so. There was also a change in national policy on 17 August 2026, which had a bearing on the Council's position, and then finally it was only on 5 and 12 October 2026 respectively that adequate evidence pertaining to flood risk was provided. It was entirely appropriate for the Council to insist on such evidence. Throughout this time, the Council also appropriately updated its position and worked with the appellant to agree matters and so did not withdraw its reasons at a late stage. Given the chronology of events, I therefore do not accept it was unreasonable to have issued the notice on flood risk and retail/town centre policy grounds.

Conclusion

24. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs, even partial, is not warranted.

Paul T Hocking

INSPECTOR