

Cost for planning appeals

When an appeal is made against the refusal of planning permission or the service of an enforcement notice the appellant and the planning authority bear their own costs in the appeal. However where one of the parties has acted unreasonably the other can seek an award of costs against the other for unreasonable behaviour.

Government Circular 03/2009 sets out the circumstances where a costs claim can be made and provides guidance on the type of behaviour that might justify a claim for costs being awarded against the other party.

In 2013 the Practice has been successful on behalf of four clients in being awarded costs against three planning authorities. The key points in those cases were:

Winchester City Council - When determining two planning applications the Planning Committee halved the term of temporary period recommended by the planning officer. The Inspector found that the decision of the Committee was arbitrary and did not appear to relate squarely to the Council's programme of work to identify and allocate sites for travelling showpeople it was undertaking through the development plan process. The Council's decision on the appeal applications was also inconsistent with the decision it had previously taken for a similar proposal elsewhere where a longer temporary period for occupation was approved. Full costs were awarded to the appellants.

Wiltshire Council - It was argued that the application, which had been recommended for permission, was refused by the Planning Committee for no proper reasons as the proposal was in accordance with the development plan and should clearly have been approved. In addition part of the reason for refusal was withdrawn at a late stage and the case presented at the appeal Hearing failed to substantiate the reason for refusal. The Inspector found that the late withdrawal of part of the reason for refusal was unreasonable behaviour and the Council had been unable to substantiate its main objection on landscape impact. Full costs were awarded to the appellant.

Waverley Borough Council - In this case a full award and partial award of costs was made in respect of two linked appeals. The Inspector dismissed the claim for a full award of costs. However she agreed that the adjournment arising from the Council arguing a change in the reasons for refusal and the adoption by the Council of the wrong baseline for making its landscape assessment and consequential failure to produce evidence which substantiated the landscape refusal was unreasonable behaviour. A partial award of costs was made for the additional costs incurred by the adjournment and for defending landscape matters.

The costs regime is there to improve the efficiency and effectiveness of the planning appeal system and also covers administrative failings by both parties. But it is important to note that costs are not awarded to the other party just because the appeal was allowed or dismissed; costs will only be awarded when there has been unreasonable behaviour by a party to the appeal that causes unnecessary or wasted expense in the process. It is beholden to all

parties to behave in an acceptable way and follow good practice and it is important to bear in mind that costs can just as easily be awarded against the appellant as the Council.

For more information about planning appeal costs contact Ian Ellis, Director