COSTS AWARDS IN PLANNING APPEALS (ENGLAND)
a guide for appellants

INTRODUCTION

This update guide has been prepared by the Department of Communities and Local Government, in consultation with the Planning Inspectorate, to tie in with changes **in England** to the planning appeal system introduced by the Planning Act 2008 and amendments to secondary legislation coming into effect from 6 April 2009.

This guide explains how one party to an appeal might have to pay another party's costs. It is relevant if you appeal to the Secretary of State (Communities and Local Government) against a planning decision taken by the local planning authority (LPA). The advice may also interest other people (known as third parties) who participate in appeal proceedings. The examples in this guide include aborted proceedings where, for example, an appeal or enforcement notice is withdrawn without good reason so that wasted expense is incurred by other parties.

Parties to appeal and other proceedings are normally expected to meet their own expenses. But if an application for costs is made, the Secretary of State or Planning Inspector may make an award of costs where one party has behaved 'unreasonably' and has caused another party to incur unnecessary expense as a result. This guidance briefly explains:

- What is a costs award
- How an award of costs can arise;
- The procedures for applying for costs; and
- What considerations are taken into account in deciding whether to make an award.

The same considerations apply whether the appeal decision is made by the Secretary of State, or (as in most cases) by an Inspector to whom the appeal has been transferred for decision.

Important note: This guidance gives advice only and has no legal force. It is intended mainly for appellants who are not professionally represented. A fuller statement of the Secretary of State's policy on awards of costs is given in Communities and Local Government Circular XX/09 "Costs Awards in Appeals and other Planning Proceedings", available from Stationery Office bookshops. You are advised to read that Circular (referred to below as the "Costs Circular") if, after reading this guide, you think you may wish to apply for your costs,* or may be at risk *of having costs awarded against you. The text of the circular and this guide can be read on the Planning Inspectorate's website www.planning-inspectorate.gov.uk

Q1 What is a costs award?

The parties in an appeal normally meet their own expenses. A costs award, where justified, is an order which can be enforced in the Courts. It states that one party shall pay to another party the costs, in full or part, which have been incurred during

the process for reaching the Inspector's or Secretary of State's decision on the appeal.

Q2 Who can apply for costs?

Either of the main parties – the appellant or the LPA – can apply for costs if they consider the other party has behaved 'unreasonably'. Any interested third parties in an appeal (see **Q12** below) can also apply for costs if, for example, a hearing or inquiry is cancelled, as a result of 'unreasonable' behaviour by the appellant or the LPA.

Q3 In what cases can I apply for my costs?

Costs can be awarded in many different cases – appeals and other types of proceedings under the Planning Acts. For simplicity, this guide refers to 'appeals' and 'appellants'. ***From 6 April 2009 there is a "level playing field" which means that costs can be awarded for all appeals and proceedings under the Planning Acts irrespective of the procedure for deciding the appeal – whether written representations, a hearing or an inquiry.*** Full guidance is in CLG Circular XX/09, referred to in the introduction.

The most common cases are appeals against the LPA's refusal of planning permission and issue of an enforcement notice. Costs awards are also available in other appeals under the Planning Acts; and also in some inquiry and hearing proceedings under other legislation.

Costs awards are also available in compulsory purchase order (CPO) cases, but on a different basis. This is explained in the DTLR booklet 1 of the 'Compulsory Purchase and Compensation' series, entitled 'Compulsory Purchase Procedure'. It is obtainable from CLG Free Literature, PO Box 236, Wetherby, WestYorkshire, LS23 7NB, telephone 0870 1226 236. A fuller statement is in CLG Circular XX/09, referred to above.

Q4 Does the 'loser' in an appeal normally have to pay the other party's costs?

No. Costs awards do not depend on the result of the appeal. They are awarded only where there has been 'unreasonable' behaviour by the party claimed against.
You will not automatically be awarded costs against the LPA if your appeal succeeds. Nor will costs be awarded against you just because your appeal fails.

Q5 When will costs be awarded?

An award of costs is always at the Inspector's or Secretary of State's discretion. But he/she would normally make an award if:

(i) one of the parties has applied for costs at the appropriate stage (see **Q14** below) ***and***

(ii) a party has behaved 'unreasonably'; ***and***

(iii) this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily.

All 3 conditions need to be met.

Q6 What is unreasonable behaviour?

Behaviour which has led directly to an unnecessary appeal to the Secretary of State might be considered unreasonable. For instance, the LPA might be unable to produce evidence to support each of their reasons for refusing planning permission, or for imposing a condition on a grant of planning permission.

The way in which one party has conducted their part of the proceedings might also be considered unreasonable. For instance, through the fault of one party, the hearing or inquiry has had to be adjourned, or unnecessarily prolonged, or cancelled, resulting in unnecessary or wasted expense.

Unreasonably causing the appeal process to be aborted or causing part of the appeal expense to be wasted – irrespective of the procedure being followed – may also lead to an award of costs. Examples are if the LPA withdraw one or more of their reasons for refusing planning permission, or issuing an enforcement notice, or if they concede a ground of appeal after the appeal has been made, without good reason; or if the appellant withdraws the appeal (or ground of appeal), but cannot show that there has been a material change of circumstances since the appeal was first made.

Another example is if the appellant fails to attend, or be represented at, a hearing or inquiry, without good reason. Or if a party fails to attend an accompanied site visit arranged by the Planning Inspectorate, so that the other party's expense of attending is wasted. Other examples of unreasonable behaviour which may justify an award of costs are given in CLG Circular XX/09.

Q7 Could I have costs awarded against me for pursuing an appeal which had no reasonable prospect of success?

Yes. If, for instance, the Secretary of State (or an Inspector) had recently dismissed an appeal for the same or very similar development, on the same land, nothing had changed since and there was clearly no prospect of the further appeal being successful. Or the appeal may be one which is *clearly* contrary to national planning policies. In such a case the LPA will have stronger grounds for seeking an award of costs if they can show that they alerted you to the relevant facts and warned you they would seek their costs if you persisted with your appeal.

Q8 Can costs be awarded against me if I decide not to proceed with my appeal?

Yes. ***You are at risk of an award of costs for withdrawing an appeal at any stage.*** The Secretary of State will carefully consider the reasons for your decision to withdraw, which you will be invited to state in writing. An award of costs is unlikely to be made if you can show good reason for withdrawing when you did – for example, if the LPA have granted planning permission, with conditions or not, for the same development; or if there has been some other relevant and material change since you appealed.

If you do decide to withdraw your appeal, or any of the grounds of the appeal (for example, in an enforcement notice appeal), you should notify the Planning Inspectorate *immediately*, by email, fax or letter to the Case Officer, quoting the appeal reference number. That will at least minimise the wasted expense incurred by other parties.

Q9 Can costs be awarded against me if I am not professionally represented?

Yes. Wilfully unco-operative behaviour by any party, whether or not professionally represented, may result in an award of costs. Examples of such behaviour would be a refusal to supply a timely and adequate statement of the grounds of appeal when asked to do so, or refusal to discuss the appeal with the LPA before the hearing or inquiry to narrow areas of dispute. Failure to notify the Planning Inspectorate of a change of address may be unreasonable if this leads to unnecessary attendance at the hearing or inquiry or site visit by another party.

Where technical issues of planning or legal precedent or procedure arise, the Secretary of State, in judging whether behaviour was unreasonable, would consider the professional advice obtained by the party in question – and also any warning given by the local planning authority (see **Q7**).

Q10 Can I have costs awarded against me when a hearing or inquiry is held, even though I have opted for the written method and not asked for a hearing or an inquiry?

Yes. Costs can be awarded irrespective of the appeal method or procedure (see **Q3**). The Planning Inspectorate on behalf of the Secretary of State will choose the most appropriate method by applying published criteria approved by Ministers. In most cases this is likely to be the written method. But if the Planning Inspectorate considers a hearing or inquiry to be necessary to determine your appeal, although you have opted for the written procedure, the reasons for this will be explained. If you unreasonably cause a cancellation, or otherwise behave unreasonably in the proceedings an award of costs can be made

Q11 Will an application for my costs affect the decision on my appeal?

No. Appeals are decided entirely on their facts and planning merits. The decision will not be affected in any way by the submission of a costs application. A decision whether to award costs is an entirely separate matter. It usually follows after the end of the appeal process.

Q12 What about third parties?

Generally speaking, parties other than the appellant and the LPA who appear at an inquiry (or hearing) – neighbours, for example, or local amenity societies – will rarely be involved in claims for costs. *If third parties choose to participate in appeal proceedings, they do so on their own initiative*. For example, they may wish to appear at an inquiry (or hearing), in support of the LPA's refusal of planning permission. Only in exceptional circumstances – for instance, where an inquiry has to be adjourned unnecessarily because of the unreasonable behaviour of a third party or of another party – will third parties have any grounds for claiming costs, or be likely to face claims against them.

Q13 How might a third party be awarded their costs?

Third parties may be awarded costs, in their favour, when an inquiry (or hearing) is adjourned or cancelled. An award may be made in the following circumstances:

(i) where unreasonable conduct by the appellant or the LPA causes the adjournment or cancellation of an inquiry (or hearing); or

(ii) where an appellant withdraws the appeal too late for the inquiry (or hearing) to be cancelled, or fails to attend an inquiry (or hearing).

When this happens, third parties are unlikely to have grounds for claiming costs for wasted preparation work (in addition to their attendance costs) unless they can show that, *before incurring any expense*, they forewarned the appellant and the LPA that they intended to appear at the inquiry (or hearing). For inquiries they can do this by contacting the Planning Inspectorate at an early stage and seeking "Rule 6" status (under the relevant Inquiries Procedure Rules). They should also have first enquired of the LPA whether the appellant was trying to resolve differences over the appeal issues by discussion with them.

Q14 How and when should I apply for costs?

There is no formal procedure or required application form (as explained in paragraph A31 of the Costs Circular). But a template which can be used to apply for costs in written appeals, or provide advance notice in hearings and inquiry cases, is at the end of this guide. Your application should explain why you consider the other party has acted unreasonably, and how this has caused you to incur unnecessary or wasted expense.

For hearings and inquiries

Where a hearing or inquiry is held, an application for costs should be made ***to*** the Inspector ***at*** the hearing or inquiry before the Inspector closes and adjourns to the site visit. The Inspector will then be able to consider the relevant arguments.

If before the hearing or inquiry you clearly see grounds for an award of costs and intend to apply to the Inspector you can also give advance notice of this. Written statements disclosed to the other party in advance can save valuable time in hearing oral submissions on costs. It can avoid unhelpful surprises which can lead to delays, and so inflate costs, on the day. If you decide to give advance notice you should:

- provide the case officer with a written statement of your grounds in advance; and
- send a copy of this to the other party so that your intention is clear and open.

The case officer will then write to the other party and invite a response. This will be copied to you for any final comment before the hearing or inquiry opens.

At the hearing or inquiry either party can add to submissions already made by putting them to the Inspector when the application is dealt with.

The Inspector will provide opportunity for a costs application and response. The party applying for costs will be able to make the application or expand on any submissions already made or add further grounds, while the other party will be given an opportunity to respond before the applicant has the "final say".

For written appeals in general

Any application for costs should be made in writing to the Inspectorate's case officer at the earliest possible stage in the process, with a full statement of grounds. **Please note:** it is not enough to submit a vaguely worded application or to merely say you *intend* to make an application for costs. Your grounds for any costs application

should normally be clear by the time of the completed appeal exchanges, if not when your statement of case is submitted.

Householder appeals are a special category of written appeal (on which there is specific guidance in the Inspectorate's Guide to the Householder Appeals Service).

In accordance with the quicker procedures for householder appeals identified and accepted for treatment in this way, it should normally be clear from the outset whether there is any realistic basis for you as the appellant to make a costs application. You will be expected to make any application for costs at the same time as the submission of the appeal, supported by a full statement of why an award is considered justified.

You will need to show that the decision of the Council, as local planning authority, was unreasonably made on the basis of the information available to it at the time. As there are reduced timescales and minimal procedural requirements for these appeals, *there should be little possibility of unreasonable behaviour during the appeal process.*

Tree preservation order (TPO) written appeals can also be a special category of written appeal. The procedures for these cases are set out in Communities and Local Government's publication *Tree Preservation Orders – A Guide to the Law and Good Practice.* If you have opted to have your appeal deal with under the "fast-track" procedure, and the appeal proceeds on that basis, any application for costs should normally be made at the same time as the appeal, supported by a full statement on why an award is considered justified. You will need to show that the LPA's decision was unreasonably made on the information available to them at the time.

For a cancelled hearing or inquiry or aborted written appeal (see Q6)

In a cancelled hearing or inquiry or aborted written appeal an application for costs should be submitted *no later than 4 weeks from the date of the notice of cancellation or withdrawal.* The address to write to is at the back of this guide.

Q15 Does this mean that an application for costs cannot be considered if it is submitted later?

Generally yes. An application for costs will be considered late if it is made:

- after the hearing or inquiry is closed,
- later than 4 weeks after receiving notice of a cancellation of a hearing or inquiry
- later than 4 weeks after receiving notice of withdrawal in a written appeal
- after the Inspectorate's deadline for final comments at 9 weeks or after the site visit in a non-householder written appeal
- after the submission of a householder or "fast-track" tree preservation order appeal – where the application for costs is made by the appellant or..
- after the end of the period of 14 days beginning with the appeal start date, in the case of a householder or "fast-track" tree preservation order appeal – where the application for costs is made by the LPA.

A late application will only be accepted if the party can show good reason for not having applied sooner. **A "good reason" will not be, simply, that you have won your appeal and therefore wish to recover your costs.** The address to write to is

stated at the back of this guide. If a late costs application is accepted, the Planning Inspectorate will notify the parties and arrange an exchange of written submissions before the decision on it is issued.

Q16 If an application for costs is made *against me* in a written appeal will I be able to comment and have my comments taken into account?

Yes. In that case you will be sent a copy of the costs application and invited to comment within a set timescale. Comments will be exchanged and taken into account before the decision on the application is issued.

Q17 If my application for costs succeeds, will all my appeal expenses be paid?

No. The amount of costs will depend on what unnecessary or wasted expense you have incurred in relation to the hearing or inquiry or written appeal. For example, you might be awarded costs because the local planning authority failed to produce any evidence to substantiate only one of several reasons they gave for refusing planning permission. Your award would then be limited to the costs of contesting that reason. Similarly, where an unnecessary adjournment of the inquiry is caused by the unreasonable conduct of one of the parties, the award of costs will be limited to the extra costs incurred by the other party as a result of the adjournment. Where the application succeeds, the decision will state the extent to which costs are awarded to the successful party.

Q18 When will a decision be given on the costs application?

Normally, the costs decision will be given at the same time as the appeal decision in a hearing or inquiry case. In written cases, the costs decision may follow after the appeal decision - in the case of a householder or TPO appeal the decision will most probably follow after the Inspector's appeal decision because of the priority given to "fast-tracking" the appeal outcome

Q19 Will the Secretary of State decide the actual amount of the award?

No. The party awarded costs should first submit details of their costs to the other party, with a view to reaching agreement on the amount. If they cannot agree, the party awarded costs can refer the case to a Costs Officer or Costs Judge of the Supreme Court Costs Office for a separate decision. The procedure for this when the amount is disputed is explained in the Appendix.

Q20 Can a decision on the costs application be challenged in the Courts?

Yes. If a decision is legally defective or if the requirements of natural justice have not been met. There is no specific statutory provision for challenge. The procedure is to apply to the High Court for permission to have the decision judicially reviewed. This should be done promptly and, in any event, within 3 months of the date of decision. Anyone considering such a course would be well advised to seek professional legal advice on what would be involved.

Appendix 1

THE PLANNING INSPECTORATE

AWARD OF APPEAL COSTS:

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)

HOW TO APPLY FOR A DETAILED AND INDEPENDENT ASSESSMENT WHEN THE AMOUNT OF AN AWARD OF COSTS IS DISPUTED.

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment[1]. This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124)

But before this can happen you must arrange to have the costs award made what is called an order of the High Court[2]. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL.

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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[1] The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

[2] Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only be run from the date of that order.

The address to contact about this guide or for more information about making an application for costs is:

The Planning Inspectorate
5/03 Kite Wing
Temple Quay House
2 The Square
Temple Quay
BRISTOL BSI 6PN

Tel 0117 3728594 (England only)

The Planning Inspectorate's website is:
www.planning-inspectorate.gov.uk

Appendix 2

Date Received (Official use)

The Planning Inspectorate

Application for an award of appeal costs

You can use this form as a template if you wish to apply for costs in:-

- a written appeal
- an appeal going to a hearing or inquiry, but you wish to give advance notice of an application for costs
- an appeal which is withdrawn (or where the enforcement notice is withdrawn).

Notes to help you are on page 2.

A. Information about the claimant(s)

Full Name:……

Address:……

……

Postcode:……Your reference……

Daytime Telephone No:……Fax No:……

Email address:……

Status (Appellant/Local Authority/Interested Party):……

Agent's Name (if applicable):……

Agent's Address:……

……

Postcode:…… Reference:……

Daytime Telephone No:……Fax No:……

Email address:……

B. Information about the party being claimed against

Full Name:……

Address:……

……

Postcode:……

Status (Appellant/Local Planning Authority/Interested Party):……

C. Information about the appeal

Planning Inspectorate appeal reference number APP/… … … … … … … … … … … … … …

……

(Please quote all appeal reference numbers if the costs application relates to more than one appeal)

Name of Local Planning Authority:……

Description of the development:……

……

Address of the site:……

……

Postcode:……

Are there any outstanding or related applications or appeals for this site? …*yes/no*

If so please give details of any Planning Inspectorate reference numbers:……

……

D. Notes for guidance on your costs application – please read before going ahead

Appellants, local planning authorities and anyone else involved with the appeal (the parties) are normally expected to cover their own expenses. But anyone involved in the appeal can ask the Secretary of State or appointed Inspector to order that one party pays some or all of another party's costs. Before agreeing to this, we will have to be sure that:

- the person applying was put to unnecessary or wasted expense in the appeal because of

- the unreasonable behaviour of the other party.

An award can only be made if both these tests are met.
Please write (in section E) how you think the other party has acted unreasonably and what expense this has caused you. **Please note that only the unnecessary or wasted costs of the appeal itself can be recovered by an award.**

Before going ahead with your application, please read the guide "Costs Awards in Planning Appeals" (revised 2009 – England). This can be downloaded from our website at www.planning-inspectorate.gov.uk. You can also get a copy from our office on 0117 372 6372. We also ask you to read the full statement of national policy in the "Costs Circular" (number CLG XX/09), quoted in the guide. You can read this on our website or look at copies in your local library or council office.

Although Q14 of the guide says there is no formal procedure or application form, you can use this form as a template to make an application for costs in writing. Please refer to the relevant parts or paragraphs of the Circular which you think support your application.

The decision on your application will not go into the actual amount of costs involved – only the principle and, if an award is made, what the award is broadly for. So there is no need to state the actual amounts you are seeking. If an award is made, the parties will need to settle the amounts involved between them by negotiation; or, if that fails, by applying to the Supreme Court Costs Office for an independent decision on the matter. There is more advice on this in the costs guide, at Q18.

If you are using this form to give advance notice of a costs application in a hearing or inquiry case, please send a copy of your completed application to the other party. Q14 of the costs guide gives further information.

Please also note there are time limits for making a costs application, again depending on the procedure for deciding the appeal. Q15 of the costs guide gives further information.

E. Your costs application

Please state what you think is:

- **your unnecessary or wasted expense in the appeal (not the amount, but the kind of expense)**

- **the unreasonable behaviour which has caused you that expense**

(Application continued)

Please sign below

I understand that:

(a) use of this form is voluntary, and that the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my application for an award of costs;

(b) the costs decision resulting from processing my application will be published on the Planning Portal and will include relevant names but not addresses.

By signing this form I am agreeing to the above use of the information I have provided.

I have completed all sections of the form and confirm that details are correct to the best of my knowledge. (Please note: signature is not necessary for electronic submissions)

Signature .....On behalf of.....

Name (in capitals) .... Date.....

The gathering and subsequent processing of the personal data you give on this form accords with the terms of the Planning Inspectorate's registration under the Data Protection Act 1998. More about the Planning Inspectorate's data protection policy can be found on our website at "Privacy Statement": www.planning-inspectorate.gov.uk/pins/terms_conditions/privacy/index.htm

Please note exceptions below but otherwise send this form and any supporting documents to:

The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EA
For the attention of your appeal case officer

Or e-mail it to: the email address as shown on the letter(s) you have received from your appeal case officer

Exceptions - please note:

(1) Householder Appeals Service

Please ensure your costs application – if you wish to make one - is with your appeal form when submitting a householder appeal. If you are submitting your costs application via the Planning Casework Service on the Planning Portal, please attach it to the grounds of appeal as a separate document

If using post, please send your completed householder appeal form along with your costs application, to the address quoted on the appeal form.

(2) Tree Preservation Order (TPO) appeals

In the case of a "fast-track" Tree Preservation Order (TPO) appeal, any application for costs should normally be made at the same time as the appeal. E-mail to: environment.appeals@pins.gsi.gov.uk or send the form to the Planning Inspectorate for the attention of the Environment Team, Room 4/04 Kite Wing at the above address.