



OFFICE OF THE
DEPUTY PRIME MINISTER

COSTS AWARDS
IN PLANNING
APPEALS

*a guide
for appellants*



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Costs Awards in Planning Appeals

- Introduction
- Q1 Who can apply for costs?
- Q2 In what cases can I apply for my costs?
- Q3 Can costs be awarded only if my appeal proceeds by a public local inquiry or a hearing?
- Q4 Does the 'loser' in an appeal normally have to pay the other party's costs?
- Q5 When will costs be awarded?
- Q6 What is unreasonable behaviour?
- Q7 Could I have costs awarded against me for pursuing at an inquiry or hearing an appeal which had no reasonable prospect of success?
- Q8 Can costs be awarded against me if I decide not to proceed with my appeal?
- Q9 Can costs be awarded against me if I am not professionally represented?
- Q10 If I ask to be heard before an Inspector, could the local planning authority be awarded their costs on the ground that the case could have been adequately dealt with by written representations?
- Q11 Can I have costs awarded against me even if I do not ask for an inquiry?
- Q12 Will an application for my costs affect the decision on my appeal?
- Q13 What about third parties?
- Q14 How might a third party be awarded their costs?
- Q15 How and when should I apply for costs?
- Q16 Does this mean that an application for costs cannot be considered if it is submitted later?
- Q17 If my application for costs succeeds, will all my appeal expenses be paid?
- Q18 When will a decision be given on the costs application?
- Q19 Will the Secretary of State decide the actual amount of the award?
- Q20 Can a decision on the costs application be challenged in the Courts?
- Addresses

Costs Awards in Planning Appeals

Introduction

This pamphlet has been prepared by the Office of the Deputy Prime Minister and National Assembly for Wales. It explains how one party to an appeal may possibly have to pay another party's costs. It is relevant if you appeal to the First Secretary of State (Office of the Deputy Prime Minister) or The National Assembly, against a planning decision taken by the local planning authority, and a public local inquiry or hearing is held to consider the appeal. The advice may also interest other people (known as third parties) who participate in appeal proceedings. The guidance summarised in this pamphlet applies to a wide range of planning proceedings. Some examples are given at **Q1** .

This guidance also applies to certain proceedings for which no inquiry or hearing is held because the parties prefer to proceed by written representations - for example, enforcement notice appeals. It also applies to cases where an inquiry (or hearing) has to be cancelled because the appeal is withdrawn. Fuller details are given in **Q2 and Q6** .

Parties to appeal and other proceedings are normally expected to meet their own expenses. But if an application is made, the First 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 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 First Secretary of State, or by an Inspector to whom the appeal has been transferred for decision. For simplicity this guidance refers only to decisions by the Secretary of State (to be read as National Assembly for Wales for decisions taken in Wales).

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 Department of the Environment Circular 8/93 (Welsh Office Circular 23/93) on *Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings*, issued in March 1993 and available from Stationery Office bookshops. You are advised to read that Circular if, after reading this pamphlet, 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 can be read on the Planning Inspectorate's website www.planning-inspectorate.gov.uk

Q1 Who can apply for costs?

The parties at an inquiry or hearing normally meet their own expenses. But either of the main parties - the appellant or the local planning authority - can apply for costs if they consider the other party has behaved 'unreasonably'. Any interested third parties in an appeal (see **Q13** below) can also apply for costs if an inquiry (or hearing) is cancelled, as a result of 'unreasonable' behaviour by the appellant or the local planning authority.

Q2 In what cases can I apply for my costs?

The Secretary of State can award costs in many different cases - appeals and other categories of proceedings. Comprehensive guidance is in DOE Circular 8/93 (Welsh Office Circular 23/93), referred to in the introduction. For simplicity, this pamphlet refers to 'appeals' and 'appellants'.

The most common cases are appeals against a local planning authority's refusal of planning permission, and issue of an enforcement notice. Costs awards are also available in advertisement consent appeals (when they proceed by a hearing) and other appeals under the Planning Acts; and also in some inquiry (but not 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 ODPM Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, telephone 0870 1226 236 or in Wales from Welsh Assembly Government, Roads Administration Division, Cathays Park, Cardiff, CF10 3NQ. A fuller statement is in DOE Circular 8/93) (Welsh Office Circular 23/93), referred to above.

Q3 Can costs be awarded only if my appeal proceeds by a public local inquiry or a hearing?

Generally, yes. Applications for costs are not normally accepted where planning appeals proceed by written representations. There are some exceptions, notably enforcement notice and lawful development certificate appeals, where the costs of the proceedings may be awarded even though no inquiry or hearing is held. The Planning Inspectorate will tell you if your appeal is in this category. Costs may also be awarded in appeals under the Planning Acts, where an inquiry or hearing has been arranged, but has to be cancelled at a late stage due to 'unreasonable' behaviour by the appellant or local planning authority.

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 local planning authority 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 Secretary of State's discretion. But he would normally make an award if:

1. one of the parties has applied for costs at the appropriate stage - usually before the inquiry or hearing is concluded; or immediately after receiving confirmation that the inquiry (or hearing) has been cancelled; or before the Planning Inspector's site inspection in the exceptional kind of case mentioned in **Q3** ; *and*
2. a party has behaved 'unreasonably'; *and*
3. this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily.

Q6 What is unreasonable behaviour?

Behaviour which led directly to an unnecessary appeal to the Secretary of State might be considered unreasonable. For instance, the local planning authority might be unable to produce evidence at the inquiry to support each of their reasons for refusing planning permission, or for imposing a condition on a grant of planning permission. Or the way in which one party has conducted their part of the proceedings might be considered unreasonable. For instance, through the fault of one party, the inquiry has had to be adjourned, or unnecessarily prolonged, or cancelled, resulting in unnecessary expense.

Late cancellation of the inquiry or hearing may also lead to an award of costs if it was due to unreasonable behaviour by one of the parties. Examples are if the local planning authority withdraw one of their reasons for refusing planning permission, or issuing an enforcement notice, or they concede a ground of appeal once the inquiry (or hearing) date is fixed, without good reason; or if the appellant withdraws the appeal (or ground of appeal) after the inquiry (or hearing) date is fixed, 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, an inquiry (or hearing) without good reason. Other examples of unreasonable behaviour which may justify an award of costs are given in DOE Circular 8/93 (Welsh Office Circular 23/93).

Q7 Could I have costs awarded against me for pursuing at an inquiry or hearing 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 local planning authority 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. Once you have been formally *notified* of the inquiry or hearing date, you are at risk if you cause its cancellation without good reason. See also **Q6** above. The Secretary of State will carefully consider the reasons for your decision, 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 local planning authority 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 letter or fax to the Case Officer, quoting the appeal reference number.

In the exceptional kind of case mentioned in **Q3** - for example, an enforcement notice appeal proceeding by written representations - an award of costs may be made if an appeal or enforcement notice is withdrawn *at any stage during the proceeding*, without good reason.

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 an adequate pre-inquiry statement of the grounds of appeal when asked to do so, or refusal to discuss the appeal with the planning authority before the inquiry or hearing, when invited.

Failure to notify the Planning Inspectorate of a change of address may be unreasonable if this leads to unnecessary attendance at the inquiry or hearing 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 If I ask to be heard before an Inspector, could the local planning authority be awarded their costs on the ground that the case could have been adequately dealt with by written representations?

No. Costs will not be awarded simply because one of the parties has asked for an inquiry or hearing. The appellant and the local planning authority have a statutory right to be heard by 'a person appointed by the Secretary of State'; and the exercise of that right will not be regarded as unreasonable conduct, even if the case might adequately have been dealt with by written representations. Equally, you would not be penalised for declining the offer of an informal hearing and asking for an inquiry.

However, if you do ask to be heard, you should realise that the possibility of an award of costs may arise.

Q11 Can I have costs awarded against me even if I do not ask for an inquiry?

Yes. If the local planning authority ask for an inquiry, or if the Planning Inspectorate considers an inquiry to be necessary to determine the appeal, an award of costs can still be made if you unreasonably cause a cancellation, or otherwise behave unreasonably in the inquiry proceedings.

Q12 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.

Q13 What about third parties?

Generally speaking, parties other than the appellant and the local planning authority 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 planning authority'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.

Q14 How might a third party be awarded their costs?

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

1. where unreasonable conduct by the appellant or the local planning authority causes the cancellation of an inquiry (or hearing); or
2. 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 local planning authority that they intended to appear at the inquiry (or hearing); and they kept in close touch with the local planning authority, and first enquired whether the appellant was trying to resolve differences over the appeal issues by discussion with them.

Q15 How and when should I apply for costs?

There is no formal procedure or application form. Your application should explain why you consider the other party has acted unreasonably, and how this has caused you to incur unnecessary expense.

An application for costs should be made **to** the Inspector **at** the hearing or inquiry, where one is held. It should then be clear whether there are grounds for arguing that the other party has behaved unreasonably. If you apply before the inquiry (or hearing) is over, the Inspector will then be able to consider the relevant arguments. It is open to one party to warn the other party, at any time before the inquiry, that they intend to apply for costs at the inquiry.

In the exceptional cases (see Q3) where costs can be awarded if the appeal proceeds by an exchange of written representations and a site-inspection, a clearly stated application should normally be made in writing (addressed to the Case Officer) *before the date of the site-inspection*. Please Note: it is not enough to submit a vaguely worded application or to merely say you *intend* to make an application for costs.

In a cancelled inquiry or hearing (see Q6), an application for costs should be submitted *no later than 4 weeks from the date of the notice of cancellation*. The address to write to is at the back of this pamphlet.

Q16 Does this mean that an application for costs cannot be considered if it is submitted later?

An application made after the inquiry or hearing, or later than 4 weeks after notice of a cancellation, or later than 4 weeks after issue of the decision letter or the Planning Inspectorate's notification of withdrawal in a written representations case (see **Q3** and **Q8** above), will only be accepted if the party claiming costs can show good reason for not having applied sooner. The address to write to is stated at the back of this pamphlet. If such an application is accepted, the Planning Inspectorate will notify the parties and arrange an exchange of written submissions before the decision 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 expense you have incurred in relation to the inquiry or hearing (or written representations proceedings in the exceptional cases mentioned in **Q3**).

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 letter 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.

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 decision. The procedure for applying for adjudication 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 leave 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

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. This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London EC4A 1DQ

(Tel: 020 7947 7314)

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

The Crown 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.

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 if you are applying for costs in the circumstances mentioned at Q15 and Q16 of the pamphlet (or if you wish to obtain further copies of the pamphlet) is:

In England

The Planning Inspectorate
4/10 Eagle Wing
Temple Quay House
2 The Square

Temple Quay
BRISTOL BS1 6PN

Tel 0117 3728594 (England only)

In Wales

The Welsh Assembly Government
Cathays Park
CARDIFF CF10 3NQ

Tel 029 2082 3866 (Wales only)