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 giveadvance notice of an application for costs
- an appeal which is withdrawn (or where the enforcement notice iswithdrawn).

Notes to help you are in part D

A. Information about the claimant

Full name: Mr Nicholas Good.

Address: The Mount, Upper Seagry, Chippenham, Wiltshire

Postcode: SN15 5EX

Your reference:

Daytime telephone No: c/o agent

Fax no:

Email address: c/o agent

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

Agent's Name (if applicable): Mr Stuart Miles

Agent's Address: Vision Planning, PO Box 4915, Chippenham, Wiltshire

Postcode: SN15 9PJ

Reference:

Daytime telephone No: 07470 300735

Fax no:

Email address: stuart@visionplanning.co.uk

Date Received (Official use)

B. Information about the party being claimed against

Full name: Wiltshire Council

Address: Bythesea Road, Trowbridge, Wiltshire

Postcode: BA14 8JN

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

Local Planning Authority

C. Information about the appeal

Planning Inspectorate appeal reference number APP/Y3940/W/24/3343960

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

Name of Local Planning Authority: Wiltshire Council

Description of the development:

Variation of condition 2 of PL/2021/08755 "Erection of an agricultural building for livestock and machinery storage and associated track"

Address of the site: The Mount, Upper Seagry, SN15 5EX

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 an application, your attention is drawn to The National Planning Practice Guidance web-based resource, which contains advice on the award of costs, in the Appeals section.

While there is no formal procedure or application form for making an application for costs you can use the template (below) to make an application for costs in writing.

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 Senior Courts Costs Office for an independent decision on the matter.

When using the costs application 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.

Please also note there are time limits for making a costs Application depending on the procedure for deciding the appeal. The Award of Costs Guidance provides relevant information.

E. Your costs application

Please state whether you are applying for a full or partial award of costs and what you think is:

- the unreasonable behaviour which has caused you unnecessary or wasted expense in the appeal

The PPG, at reference ID: 16-030-20140306 explains that:

"Costs may be awarded where:

- *a party has behaved unreasonably; and*
- *the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process."*

This application would normally have been determined by officers under delegated powers, but was called to Committee.

The application went to Committee with an officer recommendation for approval on the basis that the proposal accorded with the development plan.

This officer recommendation was overturned by the Committee, who refused the application without adequately substantiating the reason for refusal or explaining why the Officer advice to the Committee was, in their view, wrong.

At the outset, we would repeat the point made at paragraph 5.18 of our Appeal Statement, which was that on the day that the current NPPF was released – 19 December 2023, the Secretary of State for Levelling Up, Housing and Communities made a Written Ministerial Statement which explained that:

"... The overturning of a recommendation made by a professional and specialist officer should be rare and infrequent – such that I have reminded the inspectorate that where it cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant."

According to the reason for refusal, the Committee refused the application because:

"its material, appearance, bulk and massing fails to respect the local distinctiveness of its setting in addition to the character and qualities of Upper Seagry".

The reason for refusal then alleges that the proposal conflicts with:

- Seagry Neighbourhood Plan Policy SNP5
- Core Policy 51 (ii and vi)
- Core Policy 57 I, ii, vi and xii)
- The NPPF

In our view, none of this is substantiated by the LPA.

In terms of the proposed materials and appearance, the officer's Report to the Area Planning Committee ("Committee Report") explains that:

"... the variation [from the approved design] is still formed of a design and material found within the open countryside in various designs and scale. The revised design is also modest in terms of its simplistic design and still reflects the original intended use, and if viewed from public vantage points, the proposed building would not appear out of character..."

Even the LPA's Statement of Case accepts that the *"...appearance and materials [are] found within the open countryside but usually on a larger scale."* It is unclear why constructing an agricultural building from these materials would be more acceptable on a larger scale, but not on the scale of the appeal building.

In terms of the bulk and massing, the Committee Report explains that:

"The objections received from the Parish Council have suggested the application is also considerably larger than that previously approved. In terms of eaves and ridge height there is no variation. In terms of footprint the building is 0.10m longer than that of the original. In terms of depth the original has an enclosed depth of 7 metre with a 1m overhang either side resulting in a roof span measuring 15m x 9m. The variation has the sides enclosed from the edge of the roof instead of inset with an overhang, as such the internal footprint is no larger than that of the original approved roof span.

Furthermore, the application building when compared to the overall scale/size of the application site would appear subservient in its setting given the limited scale and simple design of the building and as a result, a large portion of the land would remain undeveloped."

The Committee Minutes record that:

"Members of the Committee then had the opportunity to ask technical questions to the officer. Concerns were raised over the increase in size between plans.

It was clarified that officers did not consider the difference a significant increase..."

The Committee did not provide any reasons for departing from this advice, and the LPA's Statement does not do so either. The Committee refused the application on the basis of the materials and appearance, and its bulk and massing, despite being advised by officers that there was no reason to refuse on these bases.

The appellant tells us that a Councillor at the Committee asked officers how they would have determined the proposal the subject of this appeal if this has come before them as the initial proposal, rather than as a variation to the originally approved design. Officers explained that they would have approved it.

It is notable that the Committee Minutes record that:

"Cllrs felt the applicant should have returned to ask for planning permission before pressing ahead [with the erection of a different agricultural building]."

The application was retrospective, but should nevertheless have been considered on its merits, and the implication of this statement is that the Committee chose to punish the applicant for altering the design without consent, rather than to consider the application on its merits, as officers had done.

The Committee minutes note that *"During the debate Officers warned Cllrs against prejudicial thought based on previous applications. Cllrs wanted to ensure it was made aware that this had not been the case."*

Nevertheless, the fact that Councillors were warned that their debate may have appeared prejudicial suggests that the debate was heading in such a direction.

In our view, therefore, the LPA's case is simply that Councillors disagreed with the advice given by Officers, with no planning justification for doing so, and this is unreasonable.

The Committee also apparently failed to consider the "fallback" of the originally permitted building. This was a material consideration that, according to paragraph 28 of Mansell, should have been considered. Not to do so was unreasonable.

The reason for refusal refers to a conflict with Seagry Neighbourhood Plan policy SNP5.

We analyse the proposal against policy SNP5 in paragraphs 6.15 to 6.26 of our Appeal Statement. In our view the proposal accords with policy SNP5, and the Committee Report explains that officers also consider the proposal to accord with policy SNP5.

The Committee's conclusion that the proposal conflicts with policy SNP5 is unsubstantiated, and this is unreasonable.

The reason for refusal refers to a conflict with Core Policy 51 ii and vi.

These criteria relate to conservation and possible enhancement of *"the locally distinctive character of settlements and their landscape settings"* and *"important views and visual amenity"*.

We analyse the proposal against these criteria in paragraphs 6.41 to 6.47 of our Appeal Statement, and conclude that the proposal accords with Core Policy 51.

Crucially, the approved fallback building must be considered when determining the impact of the proposal on these criteria, and this was apparently not done, and although the SNP defines "Valued Views" on Map 2, none of these views would be affected by this proposal.

The Committee Report explains that officers agree with our conclusion that the proposal accords with Core Policy 51, and the Committee did not substantiate their reasons for disagreeing with their officers in this regard. This was unreasonable.

At paragraphs 6.48 to 6.55, of our Appeal Statement, we go on to refer to the "key breaks"

referred to in policy SNP6. We do so because the appellant tells us that the impact of the proposal on identified key breaks formed part of the debate at Committee, and he believes that policy SNP6 was in the Committee Members minds when they made their decision. It has also been referred to in appeal representations from three of the four third parties.

However, in our view, as policy SNP6 relates to infill development, it is not relevant to this proposal, and, even if it was relevant, the appeal building would have no greater impact on this policy than the fallback building.

Regardless, the Committee Report explains that officers consider the proposal to accord with policy SNP6.

The reason for refusal refers to a conflict with Core Policy 57 i, ii, vi and xii.

We analyse the proposal against these criteria in paragraphs 6.27 to 6.40 of our Appeal Statement, and conclude that the proposal accords with Core Policy 57.

The Committee Report explains that officers also consider the proposal to accord with Core Policy 57, and the Committee's disagreement with this advice is not substantiated. This is unreasonable.

The reason for refusal refers to a conflict with the NPPF (2023), yet there is no mention as to which part of the NPPF the proposal is alleged to conflict with, and no substantiation of the reference to the NPPF in the reason for refusal.

The Committee Report explicitly states that officers consider the proposal to accord with paragraphs 130, 174, 192, 194 and section 12 of the NPPF, so it is unclear whether the Committee disagrees with their officers' conclusions in relation to one or more of these paragraphs, or whether they consider that the proposal conflicts with another, unspecified, part of the NPPF. This is unreasonable.

The appellant has therefore had to go to the expense of appealing a refusal which was not justified by the Committee and has not been justified by the LPA since, and on that basis, we seek a full award of costs.

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

As it is our view that the refusal of this application is not adequately substantiated, we believe that the single reason for refusal is unreasonable and that, therefore, the entire appeal could have been avoided.

It is therefore our view that the unnecessary expense resulting from the LPA's unreasonable behaviour includes all costs relating to the appeal, including preparation of the Appeal Statement, and the subsequent response to the LPA's Statement, as well as the preparation of this costs application.

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: Stuart Miles

On behalf of Nicholas Good

Name (in capitals) STUART MILES

Date: XX/XX/2024

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See the link to the following page on GOV.UK
https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices

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 6PN

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 (HAS) & Commercial Appeals Service (CAS)

Please ensure your costs application – if you wish to make one - is with your appeal form when submitting a HAS or CAS 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 the postal service please send your completed HAS/CAS 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 written 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 3/25
Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN