

Awards of planning costs



Nick Grant

Jurisdiction to award costs

- For inquiries: s. 250(5) Local Government Act 1972
The Minister causing an inquiry to be held under this section *may make orders as to the costs* of the parties at the inquiry and as to the parties by whom the costs are to be paid...
- Power extended to inspectors (para. 6(5) Town and Country Planning 1990) and hearings/written reps (s. 322 and 322A TCPA 1990).
- If not standard TCPA planning, check the legislation. Government list [here](#).
- SoS may recover administrative costs inquiry: s. 42 Housing and Planning Act 1986

SoS Policy on Costs

- SoS policy set out in the [PPG](#), inspectors err if they do not apply it: Swale BC v SSHCLG [2020] EWHC 3482 (Admin) [58].
- Parties usually bear their own costs. Costs may be awarded where
 - A party has behaved unreasonably, and
 - That unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process
- So – costs do not follow the event.
- Costs may be full or partial.

Unreasonable behaviour

- “Unreasonable” is used in its ordinary sense, not *Wednesbury* unreasonableness: Swale BC [52]-[56].
- Unreasonable procedural behaviour can include e.g. failing to meet deadlines, witnesses failing to attend, failing to prepare resulting in an adjournment, failing to resolve SoCGs, introducing new technical evidence halfway through the inquiry.
- Unreasonable substantive behaviour includes running points with no legal basis or evidence.
- See e.g.s in the [Inspector's Training Manual](#) (2020)

Directly caused unnecessary expense

- Any application for costs must “clearly demonstrate” how unreasonable behaviour resulted in unnecessary or wasted expense.
- Direct expense may extend to, e.g., time spent by appellants and representatives in preparing for the appeal, including use of consultants to provide technical detailed advice.
- Does not extend to
 - Costs unrelated to the appeal or proceedings
 - Indirect losses, such as those causing by delays in obtaining planning permission

The who and how of applications

- The Appellant, LPA and any interested parties who have taken part in the process may apply. Inspector may make an award of their own initiative.
- When and how to make an application is set out in the [PPG](#).
 - Written rep planning appeals – unless app relates to site visit, no later than final comments stage unless alternative set.
 - Hearings and inquiries – must be made before closure,
 - Good practice to make in writing before hearing or inquiry
 - If relates to behaviour at inquiry, tell inspector before adjournment or close, make application.
 - If relating to withdrawn matters, 4 weeks after notification using [PINS form](#)

The award itself

- Should clearly specify what the SoS considers the nature of the wasted costs to be: Scrivens v SSCLG [2013] EWHC 3549 (Admin); Mayor of London v SSHCLG [2020] EWHC 1176 (Admin).
- Once award is made:
 - Costs judge cannot go behind it: Maiden London Ltd v Ruddick & Anor [2018] EWHC 3684 (QB), [21]
 - Cannot look at ex post facto explanations: Maiden London Ltd [31]-[32]
 - May look at decision: Braintree DC v SSHCLG [2021] EWHC 651 (QB), [62]-[63].
- Challenging costs award made by JR: Maiden London Ltd [21].

Enforcing

- S. 250(5) LGA 1972
 - ...and every such order may be made a rule of the High Court on the application of any party named in the order.
- So,
 - Agree
 - If cannot agree, apply to High Court under s. 250
 - Then, commence detailed assessment in accordance with CPR Part 47
- For an e.g. see Maiden London Ltd.

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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