



## 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- an appeal which is withdrawn (or where the enforcement notice is withdrawn).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 in part D

### A. Information about the claimant

Full name: Mr S Watkins

Address: Braemar Property Developments Ltd  
c/o Agent

Postcode: ..... Your reference: .....

Daytime telephone No: ..... Fax no: .....

Email address: .....

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

Appellant

Agent's Name (if applicable): Mr P Deeley

Agent's Address: RCA Regeneration, Unit 6, De Salis Court,  
Hampton Lovett Industrial Estate, Droitwich Spa,  
Worcestershire

Postcode: WR9 0QE Reference: RCA102a

Daytime telephone No: 01905 887 686 Fax no: n/a

Email address: philipdeeley@rcaregeneration.co.uk

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Date Received (Official use)

**B. Information about the party being claimed against**

Full name: Herefordshire Council

Address: Development Management, Blueschool House,  
Blueschool Street, Hereford

Postcode: HR1 2LX

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

Local Planning Authority

**C. Information about the appeal**

Planning Inspectorate appeal reference number APP/W1850/W/15/3003191

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

Name of Local Planning Authority: Herefordshire Council

Description of the development: Outline planning permission for  
residential development of up to 51 new dwellings of which  
18 will be affordable.

Address of the site: Land east of Church House and west  
of A438, Bartestree, Herefordshire

#### **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 what you think is:

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

Herefordshire Council has introduced two new reasons for refusal that were not contained within their original decision notice. Furthermore it is contended that such information is manifestly inaccurate in terms of its applicability to this appeal.

Section 2 of the accompanying statement for an award of costs provides full details in respect of the above.

Such behaviour by the Local Planning Authority is considered unreasonable when appraised against the content of the National Planning Practice Guidance (reference ID: 16-047-20140306).

Furthermore the accompanying statement also demonstrates that the Local Planning Authority is not determining similar cases in a consistent manner. This is against contrary to the requirements of the National Planning Practice Guidance (reference ID: 16-049-20140306).

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

Unnecessary and wasted expense has been incurred by the appellant in having to respond to the new grounds of refusal introduced by the Local Planning Authority at this stage of proceedings. Such work has included having to demonstrate the Council's inaccuracies over the applicability of such new information.

Section 2 of the accompanying statement provides full details as to the unnecessary work that has derived from Herefordshire Council seeking new reasons for refusal.

**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 RCA Regeneration

Name (in capitals) Philip Deeley

Date 01 / 04 / 2015

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 handling of personal information can be found in our "Personal Information Charter":

<https://www.gov.uk/government/organisations/planning-inspectorate/about/personal-information-charter>

**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](mailto: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

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**APPLICATION FOR AN  
AWARD OF COSTS**

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In respect of

**SECTION 78 APPEAL ON  
LAND EAST OF CHURCH  
HOUSE, WEST OF A438,  
BARTESTREE,  
HEREFORDSHIRE**

On behalf of

**BRAEMAR PROPERTY  
DEVELOPMENTS LTD**

Our Ref: **RCA102a**

Appeal Ref:  
**APP/W1850/W/15/3003191**

Date: **April 2015**

**rca**  

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**R E G E N E R A T I O N**

## 1.0 COSTS APPLICATION

- 1.1 This statement forms part of an application for an award of costs incurred by the appellant in having to pursue a s78 planning appeal against Herefordshire Council's refusal of outline planning permission for up to 51 dwellings on land east of Church House, west of A438, Bartestree; appeal reference APP/W1850/A/W/15/3003191.
- 1.2 Section 250(5) of the Local Government Act 1972 enables the Inspector (on behalf of the Secretary of State) to make an order as to the costs of the parties at appeal. This power is applied to various planning proceedings by Section 320 of, and Schedule 6 to, the Town and Country Planning Act 1990.

### Planning Practice Guidance (PPG)

- 1.3 Guidance contained within the PPG supersedes national advice contained within the previous costs Circular 03/2009. The PPG itself contains updated guidance in respect of the award of costs relating to planning appeals and complements the legislative amendments designed to improve the efficiency and effectiveness of the planning appeals system.

### General Principles

- 1.4 In planning appeals, the parties involved are normally expected to meet their own expenses. However, all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timescales are met.
- 1.5 Where a party has behaved "*unreasonably*", and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Furthermore the PPG states that the aim of the costs regime is to "*encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay*" (Reference ID: 16-028-20140306).

- 1.6 The PPG provides a list of types of behaviour that may give rise to a procedural award of costs against a local planning authority (reference ID: 16-047-20140306). Paragraph 47 states that *"examples of unreasonable behaviour which may result in an award of costs include;*
- *introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen*
  - *prolonging the proceedings by introducing a new reason for refusal*
  - *providing information that is shown to be manifestly inaccurate or untrue"*
- 1.7 Furthermore, the PPG lists types of behaviour that may give rise to a substantive award of costs (Reference ID: 16-049-20140306), which includes *"not determining similar cases in a consistent manner"*.
- 1.8 Section 2 of this application for costs provides detailed analysis of the above points against the content of Herefordshire Council's SoC.

## 2.0 GROUNDS FOR COSTS

- 2.1 The first two points contained within paragraph 1.8 of this statement detail that costs may be awarded against a Council if they seek to introduce new reasons for refusal which result in prolonging the appeal proceedings or give rise to extra expense in preparatory work. In relation to this appeal it is considered that Herefordshire Council is seeking to introduce two new grounds for refusal.
- 2.2 The first of these two new issues being raised by Herefordshire Council is contained within paragraph 6.12 of their Statement of Case (SoC). The SoC states "*Paragraph 9.6.33 of the UDP acknowledges as part of the preamble to saved Policy HBA9 (acknowledged as not cited in the reason for refusal [RCA Regeneration emphasis]) that not all parcels of land known to be valued for their visual amenity will be identified within inset maps...*".
- 2.3 The Council has sought to introduce the above in order to try and support their claim that the appeal site is covered by some form of important landscape / open space designation.
- 2.4 However what the above quote clearly demonstrates is that the Council accept that they are introducing new information that was not contained with the reason for refusal. Accordingly, the appellant's response to the Council's SoC has had to tackle this new issue (see paragraphs 2.10 – 2.13 of the appellant's response to the Council's SoC). In summary the above quote is greatly flawed. The Council's own published planning documentation states that UDP paragraphs, such as paragraph 9.6.33, are not saved and expired in March 2010. Therefore, in introducing this new aspect to the refusal, the Council is reliant upon a unsaved paragraph, which the Council admit expired in March 2010, that is linked to a policy that itself is not contained within their decision notice. Indeed, as detailed within section 4.4 of the officer's report to committee (see appendix 1b to the appellant's original SoC) the Council's conservation manager does not cite policy HBA9 as being applicable or a key determinant to this proposal.

- 2.5 Accordingly, with the Council referencing paragraph 9.6.33 and HBA9 of the UDP, they have accepted that they have introduced fresh evidence at a late stage. Accordingly expense has been incurred by the appellant in having to provide evidence contrary to the Council's SoC.
- 2.6 Furthermore, the evidence provided by the appellant in response to this issue also demonstrates that the information provided by the Council was manifestly inaccurate. As such, the behaviour of the Council in introducing this material clearly constitutes unreasonableness as defined in the PPG (see paragraph 1.8).
- 2.7 Section 5 of the Council's SoC also seeks to introduce an entire new reason for refusal in respect of potential cumulative impacts associated with other large-scale developments within this locality.
- 2.8 The Council's SoC seeks to contend that they were unable to rely upon cumulative impacts at the time of the original application was determined. However, as detailed within the appellant's response (see paragraphs 2.59 – 2.63), the timeframes for other developments within this locality do not support this assertion by the Council. The Planning Inspectorate had written to Herefordshire Council to make them aware of on-going appeals some 22 weeks and 6 weeks prior to the determination of this application. If the Council contend that such appeals were not material to the determination of the application, then they would contradict paragraph 5.5 of their own SoC which makes reference to other on-going appeals within this locality.
- 2.9 Notwithstanding the above, the evidence provided by the Council in respect of cumulative impact is manifestly incorrect on four counts. Firstly the Council's SoC is referencing an appeal on land south of the A438 that could have cumulative impacts upon the settlement. The Council were aware at the time of publishing the SoC that this appeal had been withdrawn by the appellant (see paragraph 2.72 of the appellant's response). No correspondence has been seen from the Council to the Planning Inspectorate informing them of this erroneous detail in their SoC.

- 2.10 Secondly, for cumulative impacts to have any form of material weight then the scale of growth must significantly and demonstrably outstrip the level of growth that the Council considers sustainable. As detailed within the appellant's response to the Council's SoC, this appeal proposal does not significantly exceed any growth targets. Indeed the Council's own SoC acknowledges that the scale of permitted growth within this locality does not exceed the Council's Core Strategy target for the settlements (see paragraph 5.16 of the Council's SoC).
- 2.11 Thirdly, the author of the Council's SoC appears unaware of the Council's proposed modifications to their emerging plan following the initial stages of the EiP. As detailed within the appellant's response to the Council's SoC (see paragraphs 2.54 – 2.57) the Council is now advocating far higher level of growth to Bartestree. In adding this appeal development to that already approved within this locality, the scale of new homes only equates to circa 90% of that considered sustainable by the Council. Accordingly there cannot be any cumulative impacts if the Council's own policy evidence is promoting a higher level of growth.
- 2.12 Fourthly the Council's SoC seems to rely heavily upon an appeal decision in Tewkesbury Borough Council's administrative boundary. As detailed within the appellant's response, the appeal at Alderton has no similarities (see paragraphs 2.64 – 2.70). In summary the differences are;
- Scale of growth: In Alderton the proposal would have led to an increase in excess of 40% when measured against the existing level of new homes. In respect of this Bartestree appeal, the scale of development is less than 20% when measured against the number of properties currently within the village (as advocated by the policies contained within the originally submitted Core Strategy). When measuring against the number of properties within the parishes (as advocated within the Council's main modifications document), the scale of growth drops to less than 16%. This is against a policy backdrop of a minimum growth of 18%.

- Variation in service provision: Had the Council researched the appeal at Alderton, they would have seen that the evidence highlights that there are no nearby employment opportunities and a substantial shortcoming in respect of Alderton's accessibility. In comparison, Bartestree scores the maximum score within Herefordshire Council's evidence base in respect of its proximity to a large-scale employment site and for its existing level of public transport.

- 2.13 The above paragraphs demonstrate that it is inaccurate and untrue that this appeal at Bartestree has any similarities to the Alderton appeal. This constitutes unreasonable behaviour when measured against the content in paragraph 1.8 of this application for costs.
- 2.14 Furthermore, the Council accepts that the issue of cumulative impacts was not part of the original decision and as such it must constitute a new reason for refusal. In having to provide a detailed response to this new reason for refusal, the appellant's ability to submit a response has been prolonged and extra expense has been incurred. Accordingly such behaviour by the Council is again considered unreasonable when measured against the content of paragraph 1.8 of this application for costs.
- 2.15 The final part of this application for costs is not determining similar applications in a consistent manner. As is detailed within the Council's SoC, permission has recently been granted for 40 dwellings on a site south of the A438. There are a number of direct comparisons between these two sites. Firstly both are situated outside, but immediately adjacent to the settlement boundary and existing built form of Bartestree. Furthermore, they are both situated within the same landscape character typology as defined within the Council's landscape character SPG. The gap between the north west aspect of this appeal site and the eastern boundary of the approved site is approximately 400m; with the space between the two sites predominantly filled with existing residential properties (e.g. Hagley Park).
- 2.16 The application for the approved 40 unit scheme came after the Council had previously refused 60 units on the site. Appendix 3 of the appellant's response

to the Council's SoC contains the refusal reasons to the 60 unit proposal. Nowhere in those reasons for refusal did the Council contend that the scale of development was inappropriate. Instead it was refused for a number of points associated with landscape impact. The Council considered that development of the site would result in the loss of the only remaining clear undeveloped area south of the A438, with large-scale development in this location fundamentally changing the character and appearance of this edge of village location. Furthermore, such a development would preserve the character of the settlement but instead result in coalescence of existing built development. Ultimately the Council considered that the proposal was contrary to saved UDP policies LA2, LA3, and LA5, amongst others.

- 2.17 The above grounds for refusal are directly comparable to the grounds for refusal contained within the decision notice associated with this appeal. However, the applicant on the land south of the A438, submitted a revised scheme for 40 units. The revised scheme was still on land south of the A438 where the Council previously stated that large-scale development was incongruous with the village character. Furthermore, the scheme would still involve the development of a site considered to be the only remaining undeveloped area south of the A438 and upon which development would coalesce existing built form. Despite this, the application was approved.
- 2.18 The above demonstrates that the issue regarding the landscape character typology, coalescence and important open space / green gap (as referred to in the decision notice for the proposal to which this appeal relates) has been determined in dissimilar manner. Accordingly it is considered that the actions of Herefordshire contravene the content of the PPG as highlighted in paragraph 1.9 of this application for costs.

### **3.0 SUMMARY AND CONCLUSIONS**

- 3.1 The PPG notes that a Local Planning Authority should generally be exempt from costs when they have refused planning permission for "*a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted*" (reference ID: 16-050-20140306). However as this statement has detailed, the Council has firstly sought to introduce new reasons for refusal that were not within their reason for refusal. Accordingly expense has been incurred by the appellant in seeking to respond to these new reasons for refusal.
- 3.2 The evidence provided by the appellant has demonstrated that the new reasons for refusal are also manifestly inaccurate in terms of their applicability to this appeal.
- 3.3 Introducing such new yet inaccurate material at this late stage of the appeal process is considered to constitute unreasonable behaviour by the Local Planning Authority. As set out in the National Planning Practice Guidance such behaviour gives rise to a procedural award of costs against the Planning Authority.
- 3.4 Notwithstanding the above, the appellant has also demonstrated that the Council has failed to treat similar applications in a like for like manner. As detailed within the National Planning Practice Guidance such behaviour gives rise to a substantive award of costs against the Planning Authority.