



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- an appeal which is withdrawn (or where the enforcement notice is withdrawn).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 Oliver Westwood

Address: 58 Bright Wire Crescent
Eastleigh

Postcode: SO50 5SQ

Your reference: JB/7227

Daytime telephone No: 01202 538800 Fax no:

Email address: info@kppcltd.co.uk

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

Appellant

Agent's Name (if applicable): James Blake

Agent's Address: Ken Parke Planning Consultants Limited
Anniversary House
23 Abbott Road
Bournemouth

Postcode: BH9 1EU

Reference: JB/7227

Daytime telephone No: 01202 538800 Fax no:

Email address: info@kppcltd.co.uk

Date Received (Official use)

B. Information about the party being claimed against

Full name: Eastleigh Borough Council

Address: Eastleigh House
Upper Market House
Upper Market Street
Eastleigh

Postcode: SO50 9YN

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

Local Planning Authority

C. Information about the appeal

Planning Inspectorate appeal reference number APP/W1715/C/23/3329379

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

Name of Local Planning Authority: Eastleigh Borough Council

Description of the development:

Without planning permission, the erection of an unauthorized outbuilding is shown red on the attached plan. By virtue of the height, scale, mass, as well as the materials uses, the structure of the outbuilding is creating an imposing presence at the foot of the garden space adjacent to the public realm, which is visually intrusive and, as erected, is noticeably larger than Outbuildings situated within a number of other gardens within the estate, standing much higher than the boundary fence while others have minimal pitched roofing visible above boundary fence lines.

Address of the site: 58 Bright Wire Crescent
Eastleigh
SO50 5SQ

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

Condition 5 of planning application ref. 04771/124 removed permitted development rights for Class A-H of Part 1, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 1995 (as amended). It is considered that the removal of these rights is unreasonable, unnecessary and unjustified. It is further considered that the removal of these rights by way of condition would likely fail the tests of reasonableness and necessity as outlined in the National Planning Practice Guidance (PPG).

The Appellant has erected a replacement outbuilding on the site, following the removal of a larger outbuilding (within the parameters of what would be allowable under permitted development) which was erected in 2018, without any enforcement action being taken. An outbuilding was first erected on the site in 2009, again within the parameters of what would be allowable under permitted development, without enforcement action being taken.

The 2009 outbuilding stood until the 2018 outbuilding was erected in its place, identifying a history of outbuildings being erected on the appeal site without enforcement action being taken. The current outbuilding, subject of this appeal, falls well within the parameters of what would be allowable under Schedule 2, Part 1, Class E, had these rights not been unjustly removed.

In addition, there are a number of other outbuildings and extensions within the immediate vicinity of the site – and indeed across the wider estate – which have taken place without the Council pursuing enforcement action. It is therefore unclear in this instance why the Council have opted to take enforcement action, where they have not done so previously and where there are other clear examples of outbuildings/other works erected which are not subject to enforcement action.

As such, it is considered that the Council's pursuit of enforcement action is entirely unnecessary, inconsistent and therefore constitutes unreasonable behaviour.

Further, elements of the Council's Statement of Case do not appear to be related to the appeal, with reference to "*planning permission not being sought*" for boundary treatments. As stated in the Final Comments letter, it is unclear why this has been included as it bears no reference to the appeal matters or Enforcement Notice. In having to respond to these points is wasted resource. Additionally, it is considered that the Council have failed to provide a reasonable response to any of the detailed submissions made by the Appellant in respect of this planning appeal.

The Council's approach to pursuing enforcement on this site has unnecessarily led to the requirement to submit an appeal. It is considered that the reasons cited in the Enforcement Notice are unreasonable and unsubstantiated.

The Appellants therefore respectfully request that an award of costs be granted in favour of the Appellant.

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

The Appellant considers the Council's approach is wholly inconsistent and an award of costs are sought for the expenses relating to initial advice to the Appellant and for the preparation of the appeal against the Enforcement Notice.

In having to prepare an appeal against the unreasonable Enforcement Notice issued for the erection of a replacement outbuilding, the appellant has had to instruct a Planning Agent for:

- Initial advice following the serving of the Enforcement Notice;
- The preparation of an appeal, including:
 - Liaison with the Council over gaining sight of the relevant decision notice referenced in the Enforcement Notice and the condition cited in an enforcement letter dated 10th May 2022;
- The preparation of Final Comments; and
- The preparation of this application for an Award of Costs.

The Planning Agents fees for initial advice, preparation of the appeal and further work associated with the appeal process therefore means the Appellant has incurred unnecessary costs.

Please sign below

I understand that:

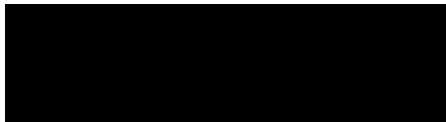
(a) use of this form is voluntary, and that the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my application for an award of costs;

(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

A black rectangular box redacting the signature.

On behalf of Mr Oliver Westwood

Name (in capitals) MR JAMES BLAKE

Date 19th January 2023

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our privacy notice.

See the link to the following page on GOV.UK

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>

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