



Department for Communities and Local Government  
Communities and Local Government Circular 03/2009

**COSTS AWARDS IN APPEALS AND OTHER  
PLANNING PROCEEDINGS**

**ADDENDUM**

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# ADDENDUM TO CIRCULAR 03/2009: COSTS AWARDS IN APPEALS AND OTHER PLANNING PROCEEDINGS

## INTRODUCTION

1. This addendum to Circular 03/2009 (the Circular) amends guidance on the award of costs in England in proceedings under the Planning Acts<sup>1</sup> in relation to grounds when an award of costs against local planning authorities may not be appropriate, and in relation to grounds when an award of costs against statutory consultees may be appropriate.
2. The costs awards regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties<sup>2</sup> who have behaved unreasonably<sup>3</sup> and have caused unnecessary or wasted expense in the process. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.
3. While the content of this addendum has no statutory status, and is guidance only, it will be fully taken into account by the Secretary of State, Inspectors and decision officers where costs are at issue in planning and planning-related proceedings.
4. The Government has published the National Planning Policy Framework which cancels Planning Policy Guidance (PPGs) and Planning Policy Statements (PPSs). References within Circular 03/2009 to PPGs and PPSs should generally be read as references to the Framework. However readers should refer to the Framework for national planning policy rather than any examples of cancelled policy in the Circular. The Government may, in the future, revisit the remainder of the Circular in the context of a wider review of planning guidance following the publication of the Framework.

## SCOPE OF ADDENDUM TO CIRCULAR

5. The guidance in this addendum will apply to all appeals, called-in planning applications and other referred applications under the Planning Acts in England which are made after the date of this addendum.

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<sup>1</sup> For the purposes of this Circular the Planning Acts are the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, and the Planning and Compulsory Purchase Act 2004 (as amended).

<sup>2</sup> The term “party” or “parties” is defined in paragraph A15 of Part A of the Annex to Circular 03/2009.

<sup>3</sup> As summarised in A22 & A23 of Part A of the Annex to Circular 03/2009.

## **CANCELLATIONS<sup>4</sup>**

11. Paragraphs D7 and D8 of Circular 03/2009.

### **Insert new text to PART A, paragraph A28:**

At the beginning of the bullet point list, insert:

- throughout the planning and appeal process, all the parties involved should make every effort to progress cases through the system as quickly as possible, in particular by responding in a timely fashion whenever their input is required.

### **Insert new text to PART B, paragraph B4:**

At the beginning of the bullet point list, insert:

- unreasonable delay in providing information or responding to requests, which adds to the time taken to determine a planning application which is later subject to an appeal.

### **Insert new text to PART B, paragraph B14:**

At the end of the second sentence, insert “This would also be the case in instances where an appellant has relied on evidence that has been shown to be manifestly inaccurate or untrue, or has deliberately concealed evidence. Equally, information the appellant relied on at the time of the planning application should have been accurate and true, and the appellant should not have deliberately concealed information”.

### **Insert new paragraph in PART B, after paragraph B15:**

B15a. Conversely, where a planning authority has refused a planning application on the grounds that it is contrary to development plan policy, and no material considerations including national policy indicate that planning permission should

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<sup>4</sup> D7. A statutory consultee who is asked by the local planning authority to provide a technical or expert witness at the inquiry or hearing, will not be regarded as a separate party in its own right liable to an award of costs. In that situation, the planning authority will be treated as the party expected to defend any appropriate costs application made. Normally, to be treated as a separate party liable to an award of costs, a statutory consultee will need to be separately represented at the event with its own advocate, in which case the consultee will be regarded as a third party, except in certain circumstances set out in D10 where the consultee will be treated as a principal party for awards of costs purposes. Any allegations of unreasonable behaviour directed at a statutory consultee, as distinct from the planning authority, should be drawn to their attention at an early stage before the event, so that there is adequate time to prepare and co-ordinate a response which avoids disproportionate work in handling a costs application.

D8. If an award of costs is made against the planning authority but the authority considers the statutory consultee should bear responsibility, the resolution of any difference of view will be a matter for the two parties.

have been granted, there should generally be no grounds for an award of costs against the planning authority for unreasonable refusal of an application.

**Insert new text to PART B, paragraph B16:**

Between the fifth and sixth sentences, insert: “Costs may also be awarded against a planning authority where at application stage or at appeal they have deliberately concealed relevant evidence”

**Insert new text to PART B, paragraph B24:**

At the end of the third sentence after “the consultee’s advice” insert “and whether the consultee can substantiate its advice (see D6a below)”.

**Insert new paragraph in PART D, paragraph after D6:**

D6a. In addition, local planning authorities often give significant weight to the advice of statutory consultees on specialist health and safety, environmental, heritage or transport issues where the planning authority does not have detailed technical expertise. Where a council has relied on the advice of the statutory consultee in refusing an application then the statutory consultee would be expected to substantiate its advice on appeal. Where a local planning authority has placed significant weight on the view of the statutory consultee and this view is a central issue at appeal the local planning authority may wish to request the statutory consultee to attend the inquiry or hearing, or make written representations, as an interested party. Where it is considered that the evidence of the statutory consultee is relevant to the determination of the appeal, the Inspector may use powers under section 250(2) and (3) of the Local Government Act 1972 to summon the statutory consultee, to an appeal held as an inquiry which may make them a party at the inquiry. Where the statutory consultee is a party to the appeal they may be liable to an award of costs to or against them. Any allegations of unreasonable behaviour directed at a statutory consultee should be drawn to their attention at an early stage. Statutory consultees should, at the earliest opportunity, notify the planning authority if their evidence or advice changes.