

Costs awards in planning appeals (England)

A guide for appellants



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Online via the Communities and Local Government website: www.communities.gov.uk

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July 2009

Product Code: 09COMM05990

ISBN: 978-1-4098-1570-9

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Introduction

This guide has been prepared by the Department for Communities and Local Government, in consultation with the Planning Inspectorate, to tie in with changes **in England** to the planning appeal system introduced by the Planning Act 2008 and amendments to secondary legislation which came into effect on 6 April 2009.

This guide explains how one party to an appeal might have to pay another party's costs. It is relevant if you appeal to the Secretary of State (Communities and Local Government) against a planning decision taken by the local planning authority (LPA). The advice may also interest other people (known as third parties) who participate in appeal proceedings. The examples in this guide include aborted proceedings where, for example, an appeal or enforcement notice is withdrawn without good reason so that wasted expense is incurred by other parties.

Parties to appeal and other proceedings are normally expected to meet their own expenses. But if an application for costs is made, the Secretary of State or Planning Inspector may make an award of costs where one party has behaved 'unreasonably' and has caused another party to incur unnecessary expense as a result. This guide briefly explains:

- what a costs award is
- how an award of costs can arise
- the procedures for applying for costs; and
- what considerations are taken into account in deciding whether to make an award

The same considerations apply whether the appeal decision is made by the Secretary of State, or (as in most cases) by an Inspector to whom the appeal has been transferred for decision.

Important note: This guide gives advice only and has no legal force. It is intended mainly for appellants who are not professionally represented. A fuller statement of the Secretary of State's policy on awards of costs is given in Communities and Local Government Circular (CLG) 03/09 *Costs Awards in Appeals and other Planning Proceedings*, available from Stationery Office bookshops. You are advised to read that circular (referred to below as the "Costs Circular") if, after reading this guide, you think you may wish to apply for your costs, or may be at risk of having costs awarded against you. You can access the text of the circular via the CLG website at www.communities.gov.uk. You can access this guide via www.planningportal.gov.uk.

Questions

Q1: What is a costs award?

The parties in an appeal normally meet their own expenses. A costs award, where justified, is an order which can be enforced in the Courts. It states that one party shall pay to another party the costs, in full or part, which have been incurred during the process for reaching the Inspector's or Secretary of State's decision on the appeal.

Q2: Who can apply for costs?

As stated above, the parties in an appeal normally meet their own expenses. Either of the main parties – the appellant or the LPA – can apply for costs if they consider the other party has behaved 'unreasonably'. Any interested third parties in an appeal (see **Q12** below) can also apply for costs if, for example, a hearing or inquiry is cancelled, as a result of 'unreasonable' behaviour by the appellant or the LPA.

Q3: In what cases can I apply for my costs or have costs awarded against me?

Costs can be awarded in many different cases – appeals and other types of proceedings under the Planning Acts. For simplicity, this guide refers to 'appeals' and 'appellants'. **From 6 April 2009 there is a "level playing field" which means that costs can be awarded for all appeals and proceedings¹ under the Planning Acts irrespective of the procedure for deciding the appeal – whether written representations, a hearing or an inquiry.** Awards can be made to or against the appellant or LPA concerned. Full guidance is in CLG Circular 03/09, referred to in the introduction.

The most common cases are appeals against the LPA's refusal of planning permission and issue of an enforcement notice. Costs awards are also available in other appeals under the Planning Acts; and also in some inquiry and hearing proceedings under other legislation.

Costs awards are also available in compulsory purchase order (CPO) cases, but on a different basis. This is explained in the CLG booklet 1 of the 'Compulsory Purchase and Compensation' series, entitled 'Compulsory Purchase Procedure'. It is obtainable from CLG Publications Centre:

telephone 030 0123 1124, fax 030 0123 1125 or product@communities.gsi.gov.uk

A fuller statement is in CLG Circular 03/09, referred to above.

¹ Except for proceedings under section 259 of the Town and Country Planning Act 1990 concerning orders relating to public rights of way affected by development, where the proceedings are dealt with by written representations

Q4: Does the 'loser' in an appeal normally have to pay the other party's costs?

No. Costs awards do not depend on the result of the appeal. They are awarded only where there has been 'unreasonable' behaviour by the party claimed against. You will not automatically be awarded costs against the LPA if your appeal succeeds. Nor will costs be awarded against you just because your appeal fails.

Q5: When will costs be awarded?

An award of costs is always at the Inspector's or Secretary of State's discretion. But he/she would normally make an award if:

- (i) one of the parties has applied for costs at the appropriate stage (see **Q15** below) **and**
- (ii) a party has behaved 'unreasonably'; **and**
- (iii) this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily

All three conditions need to be met.

Q6: What is unreasonable behaviour?

Behaviour which has led directly to an unnecessary appeal to the Secretary of State might be considered unreasonable. For instance, the LPA might be unable to produce evidence to support each of their reasons for refusing planning permission, or for imposing a condition on a grant of planning permission. Alternatively, an appellant may pursue an appeal for a proposal which was plainly a "no-hoper", with no reasonable prospect of success (see **Q7** below).

The way in which one party has conducted their part of the proceedings might also be considered unreasonable. For instance, through the fault of one party, the hearing or inquiry has had to be adjourned, or unnecessarily prolonged, or cancelled, resulting in unnecessary or wasted expense.

Unreasonably causing the appeal process to be aborted or causing part of the appeal expense to be wasted – irrespective of the procedure being followed – may also lead to an award of costs. Examples are if the LPA withdraw one or more of their reasons for refusing planning permission, or issuing an enforcement notice, or if they concede a ground of appeal after the appeal has been made, without good reason; or if the appellant withdraws the appeal (or ground of appeal), but cannot show that there has been a material change of circumstances since the appeal was first made.

Another example is if the appellant fails to attend, or be represented at, a hearing or inquiry, without good reason. Or if a party fails to attend an accompanied site visit arranged by the Planning Inspectorate, so that the other party's expense of attending is wasted. Other examples of unreasonable behaviour which may justify an award of costs are given in CLG Circular 03/09.

Q7: Could I have costs awarded against me for pursuing an appeal which had no reasonable prospect of success?

Yes. If, for instance, the Secretary of State (or an Inspector) had recently dismissed an appeal for the same or very similar development, on the same land, nothing had changed since and there was *clearly* no prospect of the further appeal being successful. Or the appeal may be one which is clearly contrary to national planning policies. In such a case the LPA will have stronger grounds for seeking an award of costs if they can show that they alerted you to the relevant facts and warned you they would seek their costs if you persisted with your appeal.

Q8: Can costs be awarded against me if I decide not to proceed with my appeal?

Yes. You should be ready to proceed with an appeal once it is submitted. ***You are at risk of an award of costs for withdrawing an appeal at any stage*** if an application for costs is made. The Secretary of State will then carefully consider the reasons for your decision to withdraw, which you will be invited to state in writing. An award of costs is unlikely to be made if you can show good reason for withdrawing when you did – for example, if the LPA have granted planning permission, with conditions or not, for the same development; or if there has been some other relevant and material change since you appealed.

If you do decide to withdraw your appeal, or any of the grounds of the appeal (for example, in an enforcement notice appeal), you should notify the Planning Inspectorate *immediately*, by email, fax or letter to the case officer, quoting the appeal reference number. Acting at the earliest opportunity will minimise the wasted expense incurred by other parties.

Q9: Can costs be awarded against me if I am not professionally represented?

Yes. Wilfully unco-operative behaviour by any party, whether or not professionally represented, may result in an award of costs. Examples of such behaviour include a refusal to supply a timely and adequate statement of the grounds of appeal when asked to do so, or refusal to discuss the appeal with the LPA before the hearing or inquiry to narrow areas of dispute. Failure to notify the Planning Inspectorate of a change of address may be unreasonable if this leads to unnecessary attendance at the hearing or inquiry or site visit by another party.

Where technical issues of planning or legal precedent or procedure arise, the Secretary of State, in judging whether behaviour was unreasonable, would consider the professional advice obtained by the party in question – and also any warning given by the LPA (see **Q7**).

Q10: Can I have costs awarded against me when a hearing or inquiry is held, even though I have opted for the written method and not asked for a hearing or an inquiry?

Yes. Costs can be awarded irrespective of the appeal method or procedure (see **Q3**). The Planning Inspectorate on behalf of the Secretary of State will choose the most appropriate method by applying published criteria approved by ministers. If the Planning Inspectorate considers a hearing or inquiry to be necessary to determine your appeal, although you have opted for the written procedure, the reasons for this will be explained. If you unreasonably cause a cancellation, or otherwise behave unreasonably in the proceedings, an award of costs can be made.

Q11: Will an application for my costs affect the decision on my appeal?

No. Appeals are decided entirely on their facts and planning merits. The decision will not be affected in any way by the submission of a costs application. A decision whether to award costs is an entirely separate matter.

Q12: What about third parties?

Generally speaking, parties other than the appellant and the LPA who appear at an inquiry (or hearing) – neighbours, for example, or local amenity societies – will rarely be involved in claims for costs. *If third parties choose to participate in appeal proceedings, they do so on their own initiative.* For example, they may wish to appear at an inquiry (or hearing), in support of the LPA's refusal of planning permission. Only in exceptional circumstances – for instance, where an inquiry has to be adjourned unnecessarily or a site visit has to be rearranged because of the unreasonable behaviour of a third party or of another party – will third parties have any grounds for claiming costs, or be likely to face claims against them.

Q13: How might a third party be awarded their costs?

Third parties may be awarded costs, in their favour, when an inquiry (or hearing) is adjourned or cancelled. An award may be made in the following circumstances:

- (i) where unreasonable conduct by the appellant or the LPA causes the adjournment or cancellation of an inquiry (or hearing) or of an accompanied site visit in which a third party has expressed an interest; or
- (ii) where an appellant withdraws the appeal too late for the inquiry (or hearing) to be cancelled, or fails to attend an inquiry (or hearing) or accompanied site visit.

When this happens, third parties are unlikely to have grounds for claiming costs for wasted preparation work (in addition to their attendance costs) unless they can show that, *before incurring any expense*, they forewarned the appellant and the LPA that they intended to appear at the inquiry (or hearing). For inquiries they can do this by contacting the Planning Inspectorate at an early stage and seeking “Rule 6” status (under the relevant Inquiries Procedure Rules). They should also have first enquired of the LPA whether the appellant was trying to resolve differences over the appeal issues by discussion with them.

Q14: How might a third party have costs awarded against them?

Generally, third parties such as local residents who attend an appeal inquiry or hearing, having perhaps written to the LPA at application stage, are most unlikely to be at any risk. Persons who take responsibility for their behaviour and act reasonably will not be at risk of an award of costs. Where a third party is “entitled to appear at an inquiry” or has stated a wish to give evidence at a hearing, they will be expected to behave appropriately – for example, by complying with the normal procedural requirements concerning the timely submission of statements of case. They will be at risk for any unreasonable conduct relating to procedural matters which causes unnecessary or wasted expense to other parties.

Q15: How and when should I apply for costs?

There is no formal procedure or required application form. But a template which can be used to apply for costs in written appeals or provide advance notice in hearings and inquiry cases is at the end of this guide. Your application should explain why you consider the other party has acted unreasonably, and how this has caused you to incur unnecessary or wasted expense.

For hearings and inquiries

If before the hearing or inquiry you clearly see grounds for an award of costs and know you intend to apply for costs you can and should give advance notice of this. Written applications disclosed to the other party in advance are good practice and can save valuable time in hearing oral submissions. You should:

- provide the case officer with an advance statement of your grounds or written skeleton argument; and
- send a copy of this to the other party so that your intention is clear and open

The case officer will then write to the other party and invite a response. This will be copied to you for any final comment before the hearing or inquiry opens.

At the hearing or inquiry either party can respond to what happens on the day and amend or add to submissions already made by putting them to the Inspector when the application is dealt with.

If you decide to apply for costs because of what has happened “on the day” you can apply orally directly to the Inspector.

The Inspector will provide opportunity for a costs application and response before the event is closed or adjourned for any site inspection. **Please note that an application for costs has to be made by this deadline to be accepted as timely (see also Q16).** The party applying for costs will be able to make the application or expand on any submissions already made or add further grounds, while the other party will be given an opportunity to respond before the applicant has the “final say”.

For written appeals in general, excluding householder and tree preservation order appeals

Any grounds for a costs application should normally be clear by the time you have received the other party’s statement of case², if not before – and at the latest when written exchanges are completed³. So you should make any costs application within this time-limit. **Please note:** it is not enough to submit a vaguely worded application or to merely say you *intend* to make an application for costs.

² Due 6 weeks after the appeal start date

³ Due 9 weeks after the appeal start date

Householder appeals are a category of written appeal, on which there is specific guidance in the Inspectorate's *Guide to the Householder Appeals Service*. You can access this guide via www.planningportal.gov.uk

In accordance with the "expedited"⁴ or quicker procedures for householder appeals which are identified and accepted for treatment in this way, you should normally be clear from the outset whether you have any realistic basis for applying for costs. You should make any application for costs at the same time as submitting the appeal, supported by a full statement of why you consider an award justified. Please note that the fact that planning permission has been refused will not, in itself, be an adequate basis for alleging unreasonable behaviour by the LPA. Furthermore, it will be necessary to show that unnecessary or wasted expense has been incurred as a direct result of the unreasonable behaviour to justify an award of costs being made in your favour.

You will need to show that the LPA's decision was unreasonably made on the basis of the information provided and available to it at the time. The reduced timescales and minimal procedural requirements for these appeals which are dealt with by the quicker procedures mean that the possibility of *unreasonable behaviour during the appeal process* is minimised. Therefore, any application for costs is likely to concern the substance of the case and, as stated above, should be made at the same time as the appeal.

If it is agreed that your appeal should be dealt with under the quicker procedures any application for costs should be made within 5 days of the start date notified by the Planning Inspectorate, if not made at the same time as the appeal.

Tree preservation order (TPO) "fast-track" appeals. The procedures for these cases are set out in Communities and Local Government's publication *Tree Preservation Orders – A Guide to the Law and Good Practice*. If you have not opted for an oral hearing, and the appeal proceeds by the written "fast-track" method, any application for costs should normally be made at the same time as the appeal, supported by a full statement on why an award is considered justified. You will need to show that the LPA's decision was unreasonably made on the information available to them at the time and that as a result you have incurred unnecessary or wasted expense.

For a cancelled hearing or inquiry or aborted written appeal (see Q6)

In a cancelled hearing or inquiry or aborted written appeal an application for costs should be submitted *no later than 4 weeks from the date of the notice of cancellation or withdrawal*. The address to write to is at the back of this guide.

⁴ Under Part 1 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (2009/452)

Q16: Does this mean that an application for costs cannot be considered if it is submitted later?

Generally yes. An application for costs will be considered late if it is made:

- after the hearing or inquiry is closed
- later than four weeks after receiving notice of a cancellation of a hearing or inquiry
- later than four weeks after receiving notice of withdrawal in a written appeal
- after the Inspectorate's deadline for final comments at nine weeks or after the site visit⁵ in appeals dealt with in writing, other than householder appeals dealt with via the quicker procedure
- later than five days after the start date notified by the Planning Inspectorate in the case of a householder appeal that proceeds via the quicker procedure – where the application for costs is made by the appellant
- after the notice of appeal in the case of a TPO appeal which proceeds by the written “fast-track” procedure or
- after the completed questionnaire has been submitted in the case of a TPO appeal that proceeds via the written “fast-track” procedure – where the costs application is made by the LPA

A late application will only be accepted if the party can show good reason for not having applied sooner. **A “good reason” will not be, simply, that you have won your appeal and therefore wish to recover your costs.** The address to write to is stated at the back of this guide. If a late costs application is accepted, the Planning Inspectorate will notify the parties and arrange an exchange of written submissions before the decision on it is issued.

Q17: If an application for costs is made against me in a written appeal, including a TPO “fast-track” appeal, will I be able to comment and have my comments taken into account?

Yes. In that case you will be sent a copy of the costs application and invited to comment within a set timescale. Comments will be exchanged and taken into account before the decision on the application is issued. In a householder service appeal or “fast-track” TPO appeal any costs application, and written exchanges, will be dealt with at the end of the appeal process.

⁵ Unless the claim concerns conduct relating to the site visit itself in which case it should be made immediately afterwards and no later than within 7 days of the site visit

Q18: If my application for costs succeeds, will all my appeal expenses be paid?

No. The amount of costs will depend on what unnecessary or wasted expense you have incurred in relation to the hearing or inquiry or written appeal. For example, you might be awarded costs because the local planning authority failed to produce any evidence to substantiate only one of several reasons they gave for refusing planning permission. Your award would then be limited to the costs of contesting that reason. Similarly, where an unnecessary adjournment of the inquiry is caused by the unreasonable conduct of one of the parties, the award of costs will be limited to the extra costs incurred by the other party as a result of the adjournment. Where the application succeeds, the decision will state the extent to which costs are awarded to the successful party.

Q19: When will a decision be given on the costs application?

Normally, the costs decision will be given at the same time as the appeal decision in a hearing or inquiry case. In written cases, the costs decision may follow after the appeal decision – in the case of a householder service or TPO “fast-track” appeal the decision is likely to follow after the Inspector’s appeal decision because of the priority given to “fast-tracking” the appeal outcome.

Q20: Will the Secretary of State decide the actual amount of the award?

No. The party awarded costs should first submit details of their costs to the other party, with a view to reaching agreement on the amount. If they cannot agree, the party awarded costs can refer the case to a costs officer or costs judge of the Supreme Court Costs Office for a separate decision. The procedure for resolving these disputes is explained in the Appendix.

Q21: Can a decision on the costs application be challenged in the Courts?

Yes. If a decision is legally defective or if the requirements of natural justice have not been met. There is no specific statutory provision for challenge. The procedure is to apply to the High Court for permission to have the decision judicially reviewed. This should be done promptly and, in any event, within three months of the date of decision. Anyone considering such a course would be well advised to seek professional legal advice on what would be involved.

Appendix 1

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – Section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed.

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment⁶. This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London
EC4A 1DQ
Tel: 020 7947 7124

But before this can happen you must arrange to have the costs award made what is called an order of the High Court⁷. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London
WC2A 2LL.

⁶ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

⁷ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only be run from the date of that order.

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

The address to contact about this guide or for more information about making an application for costs is:

The Planning Inspectorate
4/12 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
BRISTOL
BS1 6PN

Tel 0117 372 8594 (England only)

The Planning Inspectorate's website is:
www.planning-inspectorate.gov.uk

Appendix 2

Date Received (Official use)

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 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:

Address:

.....

.....

Postcode:..... Your reference.

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

Email address:

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

.....

Agent's Name (if applicable):

Agent's Address:

.....

.....

Postcode:..... Reference.

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

Email address:

B Information about the party being claimed against

Full name:.....

Address:

.....

.....

Postcode:.....

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

.....

C Information about the appeal

Planning Inspectorate appeal reference number APP/.....

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

Name of Local Planning Authority:

Description of the development:

.....

.....

Address of the site

.....

.....

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
- the expense was 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 your application, please read the guide *Costs Awards in Planning Appeals* (revised 2009 – England). This can be downloaded from <http://www.planningportal.gov.uk/portal.gov.uk>. You can also get a copy by contacting the Inspectorate's Customer Service Team on 0117 372 6372. We also ask you to read the full statement of national policy in the "Costs Circular" (number CLG 03/09), quoted in the guide. You can access this from the Communities and Local Government website at www.communities.gov.uk or you can look at copies in your local library or local planning authority office.

Although Q15 of the guide says there is no formal procedure or application form, you can use this form as a template to make an application for costs in writing. **Please refer to the relevant parts or paragraphs of the circular which you think support your application.**

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 Supreme Court Costs Office for an independent decision on the matter. There is more advice on this in the costs guide, at Q20.

If you are using this 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. Q15 of the costs guide gives further information.

Please also note there are time limits for making a costs application, again depending on the procedure for deciding the appeal. Q15 of the costs guide gives further 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

.....

.....

.....

.....

.....

.....

.....

Continue on a separate sheet if necessary.

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

.....

.....

.....

.....

.....

.....

.....

Continue on a separate sheet if necessary.

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

Name (in capitals).....

Date

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 data protection policy can be found on our website at “Privacy Statement”:

www.planning-inspectorate.gov.uk/pins/terms_conditions/privacy/index.htm

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***

Please ensure your costs application – if you wish to make one – is with your appeal form when submitting a householder 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 post, please send your completed householder 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 4/04
Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

ISBN: 978-1-4098-1570-9

ISBN 978-1-4098-1570-9



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