

**Town and Country Planning Act 1990
Appeals Under Section 174**

Fry's Bottom Wood, Chelwood, Bristol

Appeal References

**APP/F0114/C/25/3364346, APP/F0114/C/25/3364347,
APP/F0114/C/25/3364348, APP/F0114/C/25/3364349**

**Appellant's Response to the LPA'S
Application for a Partial Award of
Costs**

Introduction

1. These submissions form the Appellant's response to the LPA's application for a partial award of costs, made just prior to the Inquiry (dated September 2025).
2. That application is made on the basis of allegations that the Appellant has behaved unreasonably in:
 - a. Raising and then withdrawing (without providing reasons) Ground a) appeals originally made in respect of Appeals A and B
 - b. Failing to prepare a Statement of Common Ground as per Art 37 of the DMPO 2015
 - c. Raising "new and substantive arguments" regarding Appeal A in the "Appellant's Proofs of Evidence that were not set out in the Grounds of Appeal or Statements of Case"

Procedural Background

3. The LPA's outline of the relevant procedural background found at Section 2 of its application is agreed. The Appellant suspects that the Inquiry is more than well aware of its powers in respect of adverse costs awards. In further summary, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Raising and then withdrawing (without providing reasons) Ground a) appeals originally made in respect of Appeals A and B

4. The Inquiry will be aware that an appeal under s.174 TCPA 1990 has to be made before the notices concerned come into effect. Here, the Notices came into effect on 23rd April 2025, having been issued on 21st March 2025 (a Friday). The last day in which these Appeals could therefore be brought was 22nd April 2025, 33 calendar days and 22 business days after the Notices were issued.
5. As accepted by the LPA (see Mr. Grant's PoE at §3.10 and as per his oral evidence, these Appeals concern a complex site). Bringing a single enforcement appeal within the time limits usually applicable to these types of proceedings can be difficult, but in this case, the Appellant was faced with dealing with four Appeals, all with the same deadline for bringing an Appeal.
6. The LPA raised its concerns in respect of the Appellant's ability to bring these particular Ground a) appeals in its statement of case (dated June 2025 but received on 20th June 2025 by the Appellant). Oddly, it did not do so as a preliminary point, or even at the start of its response to each Appeal, but did so as the final aspect of its response to Appeal A and B.

7. The CMC took place on 14th July 2025. At that hearing, the LPA raised this issue as a preliminary point, and the Appellant very candidly accepted that the issue was being considered and that it was likely to be an issue that could be discussed between the parties and resolved without the need to incur the time and costs of legal submissions on this point and, indeed, expend Inquiry time on this issue.
8. As matters transpired, it was agreed by the Appellant that he could not advance these Grounds a) Appeals. There was a slight delay in him doing so as he required advice from his solicitors who, due to the time of year the CMC was held, were away. However, once his instructions were confirmed, the Inquiry was notified.
9. There was not thought to be a need to give reasons – the issue had been discussed at the CMC, and the withdrawal was clearly made on the basis that the Appellant accepted the LPA's position.
10. As put to Mr. Grant in cross-examination, that is not unreasonable behaviour; it is an example of an Appellant reviewing his case in light of the initial response by an LPA and confirming the decision not to proceed, avoiding wasted costs and time, as soon as possible in the circumstances. The confirmation was made without the need for the issue to be dealt with through PoEs.
11. The LPA complains that *"The Council was put to the unnecessary expense of having to prepare a rebuttal to the Appellant's Ground (a) appeal which required a substantive analysis of the planning merits. The Council's rebuttal was set out at 6.25-6.51 of its statement of case."* However, given the point raised by the Council, there was no such requirement to assess the planning merits. It chose to do so, but could easily have relied on what appears to have been its primary position that the Grounds a) Appeals were defective. Had it taken that approach, no costs would have been expended on the planning merit analysis.

Failing to prepare a Statement of Common Ground as per Art 37 of the DMPO 2015

12. The LPA has misunderstood the provision of Art 37 DMPO. There has been no breach of the requirements of Art 37.
13. Art 37(A1) and (1) is clear that it applies to appeals made under s.78 TCPA 1990. These are Enforcement Appeals, made under s.174 TCPA 1990. This is a surprising mistake for an LPA to make. There is no basis in law for the complaint levelled at the Appellant here.
14. In enforcement appeals, the procedure for submitting a statement of common ground is found in Rule 17 of The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002. That provides that such a document is to be sent 4 weeks before an Inquiry opens.

Raising “new and substantive arguments” regarding Appeal D in the “Appellant’s Proofs of Evidence that were not set out in the Grounds of Appeal or Statements of Case”

15. Contrary to what is being claimed here, these are not “new and substantive arguments”. The LPA acknowledges this in both its Costs Application (at §3.18) and its Opening Submissions (at §40) where it describes Mr. Downing’s contention that the site is to be considered to be multiple planning units as being “almost entirely new” (**emphasis added**).
16. Mr Grant has dealt with the argument in his short rebuttal. Within that earlier document, he claimed that the argument was “a new argument”. The qualification found in the LPA’s Opening and Costs Application recognises that this is not the case.

17. To explain – the qualification found in its case Statement and Costs Application indicates that the LPA was aware that an argument along these lines was to be pursued by the Appellant.

18. The question of planning units was raised by Mr. Downing with Mr. Grant in correspondence found at [CD5.38]. Those email exchanges are dated 16th April 2025, shortly before the Appeal needed to be filed. In this exchange, Mr. Grant sought clarification in respect of the Notice concerned in Appeal D to which Mr. Grant responded on 17th April

From your question it would seem to imply that you consider there is a possibility that different planning units exist on with the land, if this is the case, could you please specify them?

19. Whilst the case of *Burdle* was not specifically set out in the Appellant's Statement of Case for Appeal D or, indeed, the Grounds of Appeal (CD2.4), it is clear that the Appellant seeks to deal with each allegation separately and not as part of a mixed use.

20. The LPA could, and should, have dealt with this in its case statement as it is clear to the Appellant that this would be an issue. As set out above, the time limits for filing the Appeals in the circumstances of this matter was challenging given the complexity, however, this issue was live – the LPA was clearly aware of it and could have dealt with it. It has made belated submissions on the point, which have been accepted into the Inquiry.

CONCLUSION

21. The LPA's Application should be dismissed. In order to allow it, the Inquiry needs to be satisfied that the Appellant has behaved unreasonably **and** that the

unreasonable behaviour has caused the LPA to incur unnecessary or wasted expense in these Appeals.

22. For the reasons set out above, the Inquiry cannot be satisfied that either limb of the test is met.

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18th September 2025