Llywodraeth Cymru
Welsh Government

Section 12 Annex: Award of Costs

Development Management Manual

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Section 12 Annex

Awards of Costs

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1.0 Introduction, purpose and scope

1.1 This annex sets out Welsh Government policy and provides guidance on the awards of costs for planning related appeals and applications before the Welsh Ministers.

1.2 Parties are expected to meet their own costs. An appellant or applicant is not awarded costs simply because their appeal or application succeeds and similarly, a local planning authority is not awarded their costs because their position or decision is upheld. An award of costs may only be made where one party has behaved unreasonably and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense. An award of costs requires one party to pay another party's costs (in full or in part) that have been incurred as a result of a proceeding under which a decision of the Welsh Ministers, or Planning Inspector working on their behalf, is reached. This may be an, application, appeal or reference (a list of proceedings appears at paragraph 1.5). The proceedings may be dealt with by way of written representations, hearing or inquiry (or a mixture of any of those three methods). It will be for the Welsh Ministers or a Planning Inspector to decide whether unreasonable behaviour has occurred, and if it has, whether it has led to unnecessary or wasted expense.

1.3 Costs are awarded by way of an order, which states the broad extent of the expense the party can recover from the party against whom the award is made. A costs order will not determine the actual amount, which remains subject to settlement between parties.

Power to award costs

1.4 Section 322C (Costs: Wales) of the Town and Country Planning Act 1990 applies to any application, appeal or reference to the Welsh Ministers under the Town and Country Planning Act 1990, and the Planning (Hazardous Substances) Act 1990 whether it is considered at an inquiry, hearing or on the basis of written representations. Section 322C(2) enables the Welsh Ministers to make directions

as to the costs they (or those acting on their behalf, such as the Planning and Environment Decisions Wales (PEDW)) incur (including general staff costs and overheads) in connection with an application, appeal or reference and the person(s) by whom those costs are to be paid. Section 322C(6) enables the Welsh Ministers to make orders as to the costs of the applicant, appellant or any other party to the application, appeal or reference and the person(s) by whom those costs are to be paid. Similar provisions are also available in sections 180 and 181 of the Historic Environment (Wales) Act 2023.

1.5 Section 322C(5) of the 1990 Act and section 180(4) of the 2023 Act enables the Welsh Ministers, by regulations, to prescribe a standard daily amount for costs. However, no daily amount has been prescribed at this time.

Proceedings to which costs apply

1.6 Section 322C (Costs: Wales) of the Town and Country Planning Act 1990 applies to proceedings as set out in paragraph 1.3 above. Section 322C also applies to certain proceedings under the Highways Act 1980 and the Wildlife and Countryside Act 1981. As such, section 322C applies to proceedings which include, but are not limited to:

- Planning and related appeals[1];
- Enforcement and related appeals[2];
- Called in applications[3];
- Planning applications for Developments of National Significance ("DNS") and associated secondary consents[4];
- Opposed public path extinguishment and diversion orders[5];
- Appeals in connection with consents relating to Sites of Special Scientific Interest[6];
- Appeals against management notices[7]; and
- Opposed orders modifying the definitive map and statement[8].

In most cases, section 322C does not apply to an application, appeal or reference made to the Welsh Ministers before 1 March 2016[9].

[1] All appeals under and applied by S.78 of the Town and Country Planning Act 1990, S.100 of the Historic Environment (Wales) Act 2023, S.21 of the Planning (Hazardous Substances) Act 1990, S.195 of the Town and Country Planning Act 1990.
[2] S.174, S.208 and S.217 of the Town and Country Planning Act 1990, S.127 of the Historic Environment (Wales) Act 2023, S.25 of the Planning (Hazardous Substances) Act 1990.
[3] S.77 of the Town and Country Planning Act 1990, S.94 of the Historic Environment (Wales) Act 2023, S.20 of the Planning (Hazardous Substances) Act 1990.
[4] S.62D and S.62F of the Town and Country Planning Act 1990.
[5]S.121(5A) of the Highways Act 1980.
[6] S.28F of the Wildlife and Countryside Act 1981.
[7] S.28L of the Wildlife and Countryside Act 1981.
[8] Paragraph 10A of Schedule 15 to the Wildlife and Countryside Act 1981.
[9] Articles 2(b), 4, 16 and 17 of the Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 provide detailed information regarding the commencement and transitional provisions connected to section 322C.

The procedure for proceedings

1.7 The manner in which proceedings are determined is often dependent upon the complexity of the planning matters to be considered. This can take the form of the following procedures:

- Written representations;
- Hearing; or
- Inquiry.

1.8 The Welsh Ministers or a Planning Inspector working on their behalf can determine that a mixture of the above methods be used in determining proceedings. Where a mixture of methods are employed, they are referred to as combined proceedings. In such instances, some information is requested to be supplied in written form, though a hearing or inquiry will be held to consider more complex issues. The use of inquiries would be limited to only those issues where this procedure is deemed appropriate and necessary, in line with published criteria.

Why costs are awarded

1.9 All parties involved in the proceedings listed at paragraph 1.5 are expected to behave reasonably to support an efficient and timely process. Parties must normally meet their own expenses. However, where it is deemed that one party has behaved unreasonably, either directly or indirectly, and this has caused another party to incur 'unnecessary or wasted expense' (see paragraphs 2.2 – 2.5) in the appeal or application process, they may be subject to an award of costs.

1.10 The ability for parties to be awarded costs is intended:

- To encourage all those involved to behave in a reasonable manner, instil a greater sense of discipline and follow good practice in terms of timeliness and in the presentation of full and detailed evidence to support their case;
- To encourage local planning authorities to exercise properly their development management responsibilities, to rely only on reasons for refusal that stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay; and
- Not to deter people from exercising their statutory right of appeal.

2.0 Circumstances in which costs can be awarded

The main criteria

2.1 Costs will be awarded where:

- A party has behaved unreasonably[10]; and
- Unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense[11].

[10] The definition of and examples of unreasonable behaviour are contained in section 3 of this guidance.
[11] Unnecessary or wasted expense is defined in paragraphs 2.2-2.5

Meaning of 'unnecessary or wasted expense'

2.2 During proceedings, parties will incur expenditure through compiling the necessary statements, engaging in specialist advice and appearing at a hearing or inquiry (where applicable).

2.3 Parties are expected to meet their own costs when participating in proceedings. However, significant costs may be wasted, or ultimately deemed unnecessary, by parties in preparing for proceedings, where unreasonable behaviour has occurred. This could be the expense of the entire appeal or application, or only for part of the process.

2.4 Applications for costs must clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense.

2.5 Examples of what may be deemed 'unreasonable behaviour' are contained in section 3 of this guidance.

Types of cost awards

2.6 Awards for costs can cover two types of behaviour:

2.7 **Procedural** awards may be claimed for unreasonable behaviour occurring during proceedings which has caused unnecessary or wasted expense. Such an award is made where a party has disrupted or delayed the process for determining an application, appeal or call-in during proceedings.

2.8 **Substantive** awards may be claimed where the unreasonable behaviour relates to issues of substance arising from the merits of the appeal or application, and this has caused unnecessary or wasted expense. In these instances, costs cannot be claimed for the period during the determination of an application which has led to proceedings. Whilst this is the case, behaviour and actions at the time of the application can be taken into account in the consideration of whether or not costs should be awarded.

2.9 Costs may be claimed for the period before proceedings were commenced. However, those costs must be directly related to the proceeding, such as preparation for proceedings. Awards of costs cannot be made for indirect losses, such as the delay of planning permission.

2.10 Any decision in relation to the proceedings will not be affected in any way by the fact that a separate application for costs has been made. The determination of a costs application is a separate process.

Parties who may be subject to an award of costs

2.11 Any party who has taken part in proceedings may have costs awarded to or against them. These can include local planning authorities (or other relevant body), appellants and third parties, including statutory consultees. Generally, costs either in favour or against third parties will only be made in exceptional circumstances, for example, following an adjournment due to unreasonable behaviour. Costs may also be awarded to the Welsh Ministers (including those

working on their behalf) where unnecessary expense has been incurred on their part.

How costs are awarded and determining the amount payable

2.12 Welsh Ministers (or those working on their behalf) use powers, identified in paragraphs 1.3-1.4, to award costs where they have found unreasonable behaviour has occurred. Any party who has taken part in proceedings may apply for costs in writing as soon as jurisdiction for the application or appeal has been handed to PEDW.

2.13 Where a party is seeking a substantive award, an application for costs must be made at the same time as the submission of their full written statement of case. Where a written application is not made at this stage, the application for costs must contain a statement which explains why an application could not have been made at the same time as, or before, the deadline for submission of the full statement of case.

2.14 For proceedings being determined by way of a hearing or inquiry, it is recognised that a party may seek an award after the evidence has been tested at the event. The application must set out, with good reason, why the application is made later than expected, or it is likely to be rejected by the Welsh Ministers (or those working on their behalf). A later application for costs will normally be accepted where the unreasonable behaviour relates to a procedural matter which occurred during proceedings.

2.15 Most awards of costs cases are determined by Planning Inspectors. However, the Welsh Government may deal with some cases, such as those which are initiated following the withdrawal of an appeal or application or following the conclusion of the appeal or application or where PEDW initiates an award of costs to the Welsh Ministers. When determining whether to make an award, the Welsh Ministers (or Planning Inspector acting on their behalf) will take all evidence into account, alongside any extenuating circumstances.

2.16 The Planning Inspector can only address the principle of whether full or partial costs should be awarded. The final amount is settled between the parties.

2.17 When a party is awarded costs, they should send details of their costs to the other party and seek to reach an agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office.

2.18 The full process undertaken for awards of costs can be found in Schedule A.

Non-payment

2.19 Once the Welsh Ministers (or Planning Inspector acting on their behalf) have made an award of costs, they have no further role in the proceedings. Failure to settle an award of costs is enforceable through the courts as a civil debt. Parties should seek legal advice if there is any doubt on how to proceed.

Full award of costs

2.20 A full award of costs relates to all of a party's costs, starting from the date that the applicant begins to incur expense in relation to the application or appeal procedure. This may include the preparation of statements of case and supporting documentation, and the expense of making a costs application (where applicable).

Partial award of costs

2.21 Some cases do not justify a full award of costs. In these circumstances, a partial award may be made. For example, if a local planning authority refuses an application for planning permission and one reason for refusal is not properly supported, but substantial evidence has been produced in support of others. A partial award may apply where an unnecessary adjournment is caused to a hearing or inquiry into a certain subject.

3.0 Behaviour that may lead to an award of costs against appeal parties

'Unreasonable' behaviour

3.1 The word "unreasonable" is used in its ordinary meaning, as reflected in the High Court's judgement in the case of Manchester City Council v Secretary of State for the Environment and Mercury Communications Limited [1988] J.P.L. 774.

3.2 Unreasonable behaviour is identified by two categories:

- Procedural (relating to the process); and
- Substantive (relating to issues of substance arising from the merits of the appeal or application).

Examples of unreasonable behaviour

3.3 A list of examples of unreasonable procedural and substantive behaviours which may merit an award of costs is set out below. The circumstances which may cause unreasonable behaviour will differ in each case. Accordingly, some of the examples of unreasonable behaviour will not lead to an award of costs in all instances. The Welsh Ministers will assess whether 'unnecessary or wasted expense' (See paragraphs 2.2 – 2.5) has occurred before making an award of costs.

3.4 A number of the examples below relate to the late withdrawal (or where applicable, the late introduction) of an appeal, application, reason for refusal, condition or evidence. In such circumstances, where a party decides to undertake that course of action, it is in their best interests that this is undertaken at the earliest possible stage, as later withdrawal, introduction or non-withdrawal may lead to a greater award of costs.

Appellants or applicants

3.5 Appellants or applicants are required to behave reasonably in relation to procedural matters, ensuring they comply with requirements and deadlines specified by the Welsh Ministers or Planning Inspector in the determination process.

3.6 Examples of unreasonable behaviour that may lead to an award of costs include, but are not limited to:

Procedural:

(a) Introducing new grounds of appeal, fresh evidence, or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process or has been deliberately concealed;
(b) Only supplying relevant information when it was requested during proceedings, but not provided, at application stage (where applicable);
(c) Delaying or refusing to provide information requested by the Welsh Ministers or Planning Inspector;
(d) Failing to provide an adequate full statement of case where it is a requirement (i.e. unclear presentation of facts or arguments) that causes proceedings to be unnecessarily prolonged or adjourned;
(e) Lack of co-operation with another party or parties in providing information required in support of an appeal or ground of appeal or in discussing the application or appeal,
(f) Resistance to or lack of co-operation in responding to a planning contravention notice;
(g) Providing information or evidence that is knowingly inaccurate or untrue;
(h) Failing to comply with statutory deadlines or procedural requirements for proceedings;
(i) Failing to attend (or be represented), without good reason, at a site visit, hearing or inquiry, when required; and / or
(j) Withdrawing an appeal, without good reason, such as where there is no material change in circumstances.

3.7 Appellants or applicants are at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. Substantive awards which relate to a call-in or direct application to the Welsh Ministers would only be made in exceptional circumstances as the substance of the case is yet to be tested. Substantive awards may occur, but are not limited to, when:

Substantive:

(a) The development to which an appeal relates is clearly not in accordance with the development plan and/or stands little prospect of success, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence;
(b) The appeal or application follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where Welsh Ministers, or a Planning Inspector acting on their behalf,

decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period;

(c) The applicant or appellant has, without good reason or justification, failed to adhere to advice issued by the local planning authority or the Welsh Ministers as part of pre-application services, where that advice would have caused the avoidance of an appeal or consideration of those matters by the Welsh Ministers as part of the application, or the issues being considered as part of an appeal or application being narrowed;

(d) Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question; and / or

(e) There is a lack of co-operation relating to any reasonable planning obligation.

Local Planning Authority

3.8 Where local planning authorities, in exercising their duties, have acted in a reasonable manner, they should not have costs awarded against them. Local planning authorities are required to behave reasonably in relation to the procedural matters of an appeal or application, ensuring they comply with the requirements and deadlines of the process. Where a local planning authority has refused, or proposed to refuse, an application that is not in accordance with relevant development plan policy[12] and no material considerations indicate that permission should have been granted[13], there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

3.9 Local planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority.

3.10 Examples of unreasonable behaviour that may lead to an award of costs include, but are not limited to:

Procedural:

(a) Lack of co-operation with another party by refusing to provide requested information or seek additional information;

(b) Deliberately concealing relevant evidence either as part of its determination of a planning application or at a subsequent appeal or call in;

(c) Failure to determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application;

[12] S.70(2)(a)) of the Town and Country Planning Act 1990. The development plan comprises of the Local Development Plan, Strategic Development Plan; and National Development Framework for Wales.
[13] S.70(2)(c) of the Town and Country Planning Act 1990.

(d) Failing to notify the public of the relevant deadlines to submit written representations, or the date of holding a hearing or inquiry in a timely manner, where this leads to delay;
(e) Only supplying relevant information when it was requested during proceedings, but not provided, at application stage (where applicable);
(f) Failing to provide an adequate full statement of case where it is a requirement (i.e. unclear presentation of facts or arguments), that causes proceedings to be unnecessarily prolonged or adjourned;
(g) Providing information or evidence that is knowingly inaccurate or untrue;
(h) Refusing to co-operate in settling agreed facts, or supplying relevant information, so that the proceedings are adjourned or prolonged unnecessarily;
(i) Delaying or refusing to provide information requested by the Welsh Ministers or Planning Inspector;
(j) Introducing new / substantial evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;
(k) Failing to comply with statutory deadlines or procedural requirements for proceedings;
(l) Failing to attend (or be represented), without good reason, at a site visit, hearing or inquiry where required;
(m) Withdrawal of any reason for refusal, reason for issuing an enforcement notice, full withdrawal of an enforcement notice without good reason; and / or
(n) The introduction of a new reason, or proposed reason, for refusal, causing delay to the process.

3.11 Local planning authorities are at risk of an award of costs being made against them if they behave unreasonably with respect to the substance of the matter under appeal or subject to a call-in or application directly to the Welsh Ministers. Examples of this include:

Substantive:

(a) Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
(b) Failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so);
(c) Refusing permission on a ground clearly being capable of being dealt with by way of condition, where it is concluded that suitable conditions would enable the development to proceed;
(d) Acting contrary to, or not following, well-established case law;
(e) Refusing or objecting to particular elements of a scheme that the Welsh Ministers or Planning Inspector have previously indicated or determined to be acceptable;
(f) Not determining or providing a position on similar cases in a consistent manner where there has been no material change in circumstances;
(g) Failing to grant or support a further permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstances;

(h) Refusing to approve or support reserved matters when the objections relate to issues that should have been considered at the outline stage;
(i) Imposing a condition that does not comply with the tests set out in WGC 016/2014: The Use of Planning Conditions for Development Management;
(j) Where there is a lack of co-operation relating to any planning obligation;
(k) Pursuing unreasonable planning obligations (i.e. section 106 agreements) in connection with a granting of planning permission, where it is not justified and does not accord with the law or relevant policy;
(l) Where an enforcement appeal could have been avoided due to inadequate investigation or insufficient communication on the part of the local planning authority; and / or
(m) Refusal to offer pre-application services, or to provide reasonably requested information, when a more helpful approach is likely to have avoided an appeal or narrowed the issues considered as part of an appeal or application (such as the failure of a local planning authority to provide information such as site history and constraints where knowledge of that information may have avoided an appeal).

Interested parties (including statutory consultees)

3.12 Interested parties and statutory consultees play an important role in the planning system. Where either are party to a proceeding determined by the Welsh Ministers, or Planning Inspector acting on their behalf, they may have an award of costs in their favour or against them. Accordingly, there is a clear expectation that they will behave reasonably. Awards of costs, either in favour of or against interested parties (including statutory consultees), will only be made in exceptional circumstances.

3.13 In general, interested parties and statutory consultees will not have costs awarded to, or against them where a finding of unreasonable behaviour by one of the principal parties (the appellant and local planning authority) relates to the merits of the case. However, where unreasonable behaviour relating to procedural matters causes unnecessary or wasted expense, interested parties and statutory consultees may be awarded costs or have costs awarded against them. For example, where an unnecessary adjournment of proceedings is caused by unreasonable conduct. Examples of unreasonable behaviour include, but are not limited to:

Procedural:
(a) Deliberately concealing relevant evidence either during the planning application stage or at a subsequent appeal or call in;
(b) Providing information or evidence that is knowingly inaccurate or untrue;
(c) Only supplying relevant information when it was requested during proceedings, but not provided, in their response to the planning application (where applicable);
(d) Delaying or refusing to co-operate in settling agreed facts, or supplying relevant information, so that the proceedings are adjourned or prolonged unnecessarily;
(e) Delaying or refusing to provide information requested by the Welsh Ministers or Planning Inspector;

(f) Introducing new / substantial evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;
(g) Not providing consistent advice, where there has been no material change in circumstance;
(h) Failing to comply with statutory deadlines or procedural requirements for proceedings; and / or
(i) Failing to attend (or be represented), without good reason, at a site visit, hearing or inquiry, when required.

3.14 Statutory consultees or interested parties to an appeal or application may have costs awarded against them if they behave unreasonably with respect to the substance of the matter under appeal or application. Examples of this include, but are not limited to:

Substantive:
(a) Refusal on the basis of unsubstantiated evidence submitted by an interested party or statutory consultee;
(b) There is a lack of co-operation relating to any planning obligation; and /or
(c) Withdrawal of evidence which underpins a reason for refusal, where there has been no material change in circumstances.

4.0 Costs in respect of compulsory purchase and analogous orders

4.1 Section 322C (Costs: Wales) of the Town and Country Planning Act 1990 applies to any application, appeal or reference to the Welsh Ministers under the Town and Country Planning Act 1990 and the Planning (Hazardous Substances) Act 1990 whether it is considered at an inquiry, hearing or on the basis of written representations. As such, section 322C applies to proceedings which include, but are not limited to, those set out in paragraph 4.4 below. Similar provisions have been restated in the Historic Environment (Wales) Act 2023.

4.2 In most cases, section 322C does not apply to an application, appeal or reference made to the Welsh Ministers before 1 March 2016[14].

Orders which are analogous to compulsory purchase orders

4.3 In general, an order or proposal will be considered to be analogous to a compulsory purchase order if its making, or confirmation, takes away from the objector some right or interest in land for which the statute gives them a right to compensation.

4.4 Orders analogous to compulsory purchase orders are:

- Orders to revoke or modify:
  (a) Planning permission[15];
  (b) Listed building consent[16];

[14] Articles 2(b), 4, 16 and 17 of the Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 provide detailed information regarding the commencement and transitional provisions relating to section 322C.
[15] S.97 and S.98 of the Town and Country Planning Act 1990.

(c) Hazardous substances consent[17];
(d) Continuation of a hazardous substances consent on change of control land[18]; or
(e) Express consent for advertisements[19];

- Discontinuance of use or alteration or removal of buildings or works orders[20]:
  (a) Requiring discontinuance of a use of land (including the winning and working of minerals), or imposing conditions on the continuance of a use of land;
  (b) Requiring the removal or alteration of buildings or works;
  (c) Requiring the removal or alteration of plant or machinery used for winning or working of minerals;
  (d) Prohibiting the resumption of winning or working of minerals; or
  (e) Requiring steps to be taken for the protection of the environment, after suspension of winning and working of minerals.

In certain circumstances costs provisions in section 250 of the Local Government Act 1972 apply to proceedings which include but are not limited to: Inquiries held in pursuance of the Acquisition of Land Act 1981; and petition relating to compulsory acquisition of land on behalf of town or community councils[21].

Award of costs for compulsory purchase and analogous orders

4.5 There is a distinction between cases where appellants take the initiative, such as in applying for planning permission or undertaking development allegedly without planning permission and cases where objectors are defending their rights or protecting their interests. Compulsory purchase and analogous orders seek to take away a party's rights or interest in land.

4.6 If a statutory objector to a compulsory purchase and analogous orders is successful, an award of costs will be made in their favour, unless there are exceptional reasons for not doing so. The award will be made by the Welsh Ministers to the objector (or claimant) against the authority which made the order. An award against the authority, in these circumstances, will not imply unreasonable behaviour by them.

4.7 Where an order for the award of costs is made on the grounds of success, all of the following conditions must apply:
(a) The claimant must have made a formal objection to the order;
(b) The claimant must have either:
- Attended (or been represented) at an inquiry or hearing, where one has been held; or
- Submitted a written representation which was considered as part of the written procedure, where the written procedure was used and the claimant was not given an opportunity to appear;

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[16] S.107 and Schedule 8 of the Historic Environment (Wales) Act 2023.
[17] S.14 and S.15 of the Planning (Hazardous Substances) Act 1990.
[18] S.17(1) of the Planning (Hazardous Substances) Act 1990.
[19] Regulation 16 of the Town and Country Planning (Control of Advertisements) Regulations 1992
[20] S.102, S.103 and Schedule 9 of the Town and Country Planning Act 1990.
[21] S.125 of the Local Government Act 1972, as substituted by S.43 of the Housing and Planning Act 1986.

(c) The claimant must have been a statutory objector; and
(d) The claimant must have had an objection sustained by the Welsh Ministers' (or confirming authority's) refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

Procedure for awards of costs for compulsory purchase and analogous orders

4.8 There is no requirement for a claimant to make an application for costs at an inquiry or hearing. The Welsh Ministers (or confirming authority) will notify all parties concerned in writing and invite them to submit an application for an award of costs on the basis of their successful objection. When a party is awarded costs, they should send details of their costs to the other party and seek to reach an agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office.

Unreasonable behaviour

4.9 There are some circumstances where an award of costs may be made to an unsuccessful objector, or to the local authority that made the order, as a result of unreasonable behaviour by any party (which includes interested parties). These circumstances are likely to relate to procedural matters, for example, failing to submit grounds of objection or serve a statement of case, or where actions result in unnecessary expense, such as the prolonging of proceedings unnecessarily.

4.10 Where an unsuccessful objector considers that another party has behaved unreasonably, they may apply for costs on this ground by submitting an application for costs. However, Planning Inspectors may also initiate an award of costs where they consider that unreasonable behaviour has occurred and an application has not been made. The Planning Inspector will provide a recommendation to the Welsh Ministers (or the confirming authority) for a decision on whether to award costs. The procedure for awards of costs for an unsuccessful objector follows the process identified in Schedule A.

4.11 An award of costs cannot be made both on grounds of success and unreasonable behaviour. However, an award to a successful objector may be reduced if they have acted unreasonably and caused unnecessary expense in the proceedings, for example, where their conduct leads to an adjournment which ought not to have been necessary.

Partly successful objectors

4.12 Where a statutory objector is partly successful in opposing a compulsory purchase order, they will generally be entitled to a partial award of costs. For example, where a compulsory purchase order is confirmed, but excludes part of the objector's land.

Circumstances where a compulsory purchase or analogous order is linked to another application

4.13 In some circumstances, joint inquiries are held into two or more proposals, only one of which is a compulsory purchase (or analogous) order; for example, an application for planning permission and an order for the compulsory acquisition of land included in the application. Where an objector, who also makes representations about a related application, and is successful in objecting to the compulsory purchase order (and satisfies the criteria at (a)-(d) of paragraph 4.4 of this guidance), the objector will be entitled to an award in respect of the compulsory purchase or analogous order.

4.14 An objector is not precluded from being awarded for the costs relating to the other matter on the grounds that the authority has acted unreasonably.

Schedule A – Process for awards of costs

General procedure

A1 Where they intend to do so, all parties must apply for an award of costs at the earliest opportunity. This applies to all proceedings dealt with by way of written representations, hearings, inquiries or combined proceedings.

A2 In the case of appeals, the appeal form provides an opportunity for appellants to submit an application for an award of costs where a substantive award is sought. In the unlikely event of a substantive award being sought in the case of a call-in, that application for costs should be submitted within 4 weeks of the notice of reference from the Welsh Ministers (contemporaneous with the deadline for submitting a full statement of case, where the applicant elects to do so).

A3 Where a local planning authority or third party intends to apply for costs on a substantive basis, they should do so in writing within 4 weeks of the starting date of the appeal or call-in (contemporaneous with the deadline for submitting a full statement of case, where the local planning authority or third party elects to do so).

A4 The application for costs will contain a statement which clearly explains why they considered unreasonable behaviour has occurred and how this has caused unnecessary or wasted expense, taking into account this guidance.

A5 Parties subject to an application for costs against them will be given an opportunity to respond to that application. There is an opportunity for the local planning authority or other parties to respond to the appeal or call-in 4 weeks from the starting date. Where an application for costs is made by the applicant or appellant, representations in response to the application must be received on or before the deadline for representations at 4 weeks. Where an application is made by the local planning authority or other parties, the 6 week stage provides the same opportunity for parties who are subject to an application for costs against them to respond.

A6 Following receipt of these representations, the Planning Inspector, on behalf of the Welsh Ministers, will either decide that no further representations are required or that further responses are submitted from parties within a timeframe specified by the Inspector, until the Inspector has sufficient information to determine the application for costs. Once a decision on the appeal or call-in is issued, the Planning Inspector will also issue a separate report determining the award of costs application.

A7 Although early submission of an application for an award of costs is desirable, it is recognised circumstances may dictate that a party may seek an award after evidence has been tested at a hearing or inquiry. Where such an application is made, the applicant for costs must give good reason for not applying in accordance with the deadlines specified in paragraph A5.

Applications arising from unreasonable behaviour during proceedings

A8 Whilst all parties are encouraged to submit any application for costs at the earliest possible stage in proceedings, there may be occasions where unreasonable behaviour occurs during the examination and determination process of the appeal, call-in or direct application to the Welsh Ministers (such as DNS). Such applications would be made on procedural grounds. In such instances, an application for an award of costs will be considered.

A9 An appeal or application may follow one or more of the three different procedures.

Written representations

A10 For proceedings dealt with by way of written representations alone, an application for costs on procedural grounds should be made as soon as possible after the alleged unreasonable behaviour has occurred. The written application must contain a statement which expresses why an application could not have been made at the same time as, or before, the deadline for submission of the full statement of case. PEDW may choose not to entertain an application for costs where no good reason is provided.

Hearings and Inquiries

A11 For proceedings which are dealt with by way of hearing, inquiry or combined proceedings, it is also an expectation that an application for costs is made at the earliest possible opportunity and in writing. This would aid in expediting proceedings. However, the Planning Inspector will provide a final opportunity for parties to apply for costs orally or in writing prior to the closure of the hearing or inquiry. If an oral application is allowed, the Inspector will afford the parties against which an application for costs has been made the opportunity to respond orally, although in some circumstances they may do so in writing within a period specified by the Inspector.

A12 Following receipt of these representations, the Planning Inspector will either decide that no further representations are required or that further responses are submitted by parties within a timeframe specified by them (usually 2 weeks), until the Inspector has sufficient information to determine the application for costs. Once a decision on the appeal or call-in is issued, the Planning Inspector will also issue a separate report with a recommendation on whether an award of costs should be granted.

Initiation by Inspectors

A13 There may be occasions where no party has made an application for costs, but the Inspector has witnessed clear unreasonable behaviour, which in his/her view has incurred parties unnecessary or wasted expense meriting an award of costs to parties or to PEDW. In such instances, the Planning Inspector, on behalf of the Welsh Ministers, will initiate an award of costs. An initiation in this way may occur after the final formal opportunity during proceedings that parties have to apply for costs has passed. This will typically be following the closure of a hearing or inquiry or where all deadlines for representations have passed in cases dealt with by way of written representations alone.

A14 It is acknowledged that the initiation of the award of costs process by a Planning Inspector may suggest a pre-determination of the award to other parties, especially given that an award of costs may be made in favour of the Welsh Ministers. To ensure transparency, such awards are to be considered by the Welsh Government, which is independent of the process and the subject of the costs claim.

A15 Where such an initiation is made, the award of costs will be dealt with by the Welsh Government in the manner outlined in paragraphs A16 - A19 below.

Procedure following withdrawal of appeal or application

A16 There are certain behaviours and circumstances which may cause an application for costs to arise following the withdrawal of an appeal, call-in or direct application. At this point, PEDW will no longer have jurisdiction over that proceeding. In such circumstances, an award of costs application will be dealt with by the Welsh Government. The Welsh Government will also determine awards of costs initiated by PEDW, including those which are for their own costs.

A17 Where an application for costs is made by the appellant or applicant, this must be submitted no later than 4 weeks from the date of the notice of withdrawal of the appeal or application. The written application must contain a statement expressing why an application could not have been made during the appeal or application. If an application for costs is received after this 4 week period, the applicant must demonstrate good reason for not applying sooner.

A18 Following the receipt of an application or an initiation of an award, the Welsh Government will invite representations from the party / parties from whom costs are sought. Parties will typically be afforded 2 weeks to respond to applications or initiations for an award of costs.

A19 Following receipt of these representations, the Welsh Government will either decide that no further representations are required or that further responses are submitted from parties within a specified timeframe, until the Welsh Government has sufficient information to determine the application for costs. A decision on the award will normally be made within 12 weeks of the receipt of all required representations. The award will be issued to the claimant and a copy sent to those parties which are subject to the award of costs against them.

Typical process of applications for costs initiated on substantive grounds

Application for costs initiated by:	Appellant or applicant	Local planning authorities or interested parties	PEDW and Welsh Ministers
When to submit application:	Upon notice of appeal or, in the case of call-ins, within 4 weeks of the notice of reference. Where substantive grounds occur during oral proceedings; prior to the close of proceedings.	Within 4 weeks of the starting date of the appeal or call-in. Where substantive grounds occur during oral proceedings; prior to the close of proceedings.	Following closure of proceedings.
Comments from respondents:	Within 4 weeks of the starting date of the appeal or call-in. Where substantive grounds occur during oral proceedings; within a period specified by the Inspector.	Within 6 weeks of the starting date. Where substantive grounds occur during oral proceedings; within a period specified by the Inspector.	Within a timeframe specified by the Welsh Ministers (usually within 2 weeks).
Further responses or representations:	Within a period specified by the Inspector.		Within a period specified by the Welsh Ministers.
Determining authority:	Where an application is made prior to the closure of proceedings; PEDW. Where an application is made following the closure of proceedings; Welsh Government Planning Directorate.		Welsh Government Planning Directorate.

Typical process of applications for costs initiated on procedural grounds

Application for costs initiated by:	Appellant or applicant	Local planning authorities or interested parties	PEDW and Welsh Ministers
When to submit application:	As soon as possible following an alleged occurrence of unreasonable behaviour causing unnecessary or wasted cost.		Following closure of proceedings.
Comments from respondents:	Within a period specified by the Inspector (usually within 2 weeks).		Within a period specified by the Welsh Ministers (usually within 2 weeks).
Further responses or representations:	Within a period specified by the Inspector.		Within a period specified by the Welsh Ministers.
Determining authority:	Where an application is made prior to the closure of proceedings; PEDW. Where an application is made following the closure of proceedings; Welsh Government Planning Directorate.		Welsh Government Planning Directorate.

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Schedule B – Who to apply to

Applications for costs during proceedings

Planning and Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

PEDW.Casework@gov.wales

Applications for costs following the withdrawal or closure of proceedings

Decisions Branch – Planning Directorate
The Welsh Government
Cathays Park 2
Cardiff
CF10 3NQ

planning.directorate@gov.wales