



Costs Decision

Site visit made on 11 March 2025

by Mr Edwin Maund BA (Hons) Dip UP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Costs application in relation to Appeal A Ref: APP/H1515/W/24/3347695

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs Sharp of Fristling Hall Farms Limited for a full award of costs against Brentwood Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to Erect a Hay Barn.

Land at Beggar Hill, Fryerning, Essex, CM4 0PN

Costs application in relation to Appeal B Ref: APP/H1515/W/24/3347697

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs Sharp of Fristling Hall Farms Limited for a full award of costs against Brentwood Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to Erect a Cow Barn.

Land at Beggar Hill, Fryerning, Essex, CM4 0PN

Costs application in relation to Appeal C Ref: APP/H1515/W/24/3347699

Land at Beggar Hill, Fryerning, Essex, CM4 0PN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Sharp of Fristling Hall Farms Limited for a full award of costs against Brentwood Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to Erect a Cow Barn.
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Costs application in relation to Appeal D Ref: APP/H1515/W/24/3347702

Land at Beggar Hill, Fryerning, Essex, CM4 0PN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Sharp of Fristling Hall Farms Limited for a full award of costs against Brentwood Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to Erect a Cow Barn.
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Decision

1. The application for an award of costs is allowed for each appeal in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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.
3. The Applicant submits that the Council has acted unreasonably in that it has accepted late correspondence on behalf of objectors significantly after the close of the consultation period and that this letter raised matters which could have been dealt with in the preceding months but were not raised by the Council.
4. The Council in changing its position did so without clear justification based on the letter from the consultant acting for the objectors. This criticised the approach the Council had taken, but did not provide any new evidence which could reasonably sustain the position now taken by the Council.
5. In changing stance without evidence to do so the Council has acted unreasonably.
6. The Applicant also states they have incurred additional expense in having to deal with both evidence from the Council and Councillors in light of the fact the positions stated are not consistent.
7. In response the Council state they could not have ignored the late representation received, and were not able to negotiate further as the appeals had been lodged. The Council consider the change in stance is justified following further consideration of the late representation and the responses received from both consultees and on legal advice.
8. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
9. The Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. As can be seen from my decisions in respect of each of the four appeals, I have found that the reasons regarding effect on trees and protected species are not supported by detailed evidence and did not justify the Council's position in presenting these reasons as appropriate defence to the appeals.
10. While I have dismissed the appeals. I also find that the failure of the Council to follow their own policy for a development within a Critical Drainage Area (CDA) until after an appeal has been lodged not only unreasonable but inexplicable.
11. Policy BE05 makes clear what is expected, yet there is no evidence that the Appellant was advised what was necessary to meet the policy tests, and this issue only appears to have been raised once the appeals were lodged.
12. I am in no doubt that the behaviour of the Council in not only using reasons that could not be sustained, but also in not following its own policy, can be regarded as unreasonable behaviour which has resulted in additional expense.
13. I am not persuaded however, that the Appellant's response to individual Councillor submissions, justifies claims of additional expense for each costs claim. The

individual Councillors are able to write in their individual capacity, but this does not represent a view of the Local Planning Authority, which should have been understood by a professional agent.

14. Therefore, while I accept there was a degree of inconsistency in the arguments presented, I do not consider that this should be regarded as a reason to support the costs claim presented in this respect.
15. Nevertheless, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified in each of the four appeals except for any time taken in responding to individual Councillor submissions.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brentwood Borough Council shall pay to Mr and Mrs Sharp of Fristling Hall Farms Limited, the costs of the four appeal proceedings described in the heading of this decision; save for any element in respect of dealing with individual Councillor arguments, such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Brentwood Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mr Edwin Maund

INSPECTOR