



Costs Decision

Site visit made on 17 April 2025

by **J D Westbrook BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 May 2025.

Costs application in relation to Appeal Ref: APP/R0660/W/24/3358127 Bradwood, Bagley Lane, Audlem, CW3 0DR

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Pamela Brisbane for a full (partial) award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for the construction of a new detached house and garage.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 proposed development would involve the construction of a detached dwelling with garage in a site within open countryside to the south east of the settlement of Audlem. The site had previously contained some industrial buildings and the land was used for agricultural purposes. The planning application was submitted in August 2022. Most of the buildings were demolished in early 2023, and in September 2023, new plans were produced for a dwelling and garage smaller than, and different in design from, the plans submitted with the application in 2022.
4. There was one reason for refusal which was that the proposed development would result in harm to the open countryside which should be protected for its own sake, and that the development would not adhere with any of the exceptions to unacceptable development in the open countryside.
5. The appellant contends that no planning policies exist that state that open countryside should be protected for its own sake, and that the Council misapplied and misinterpreted its own Development Plan Policies relating to replacement buildings in the countryside.
6. Policy PG6 of the Council's Local Plan Strategy (LPS) and Policy RUR13 of its Site Allocations and Development Policies Document (SADP) both indicate that the replacement of existing buildings in the open countryside will only be permitted where the replacement building is not materially larger than the existing building. Policy RUR13 adds a further requirement that it should not unduly harm the rural character of the countryside, by virtue of prominence, scale, bulk or visual intrusion. Since the SADP is a more detailed plan that fleshes out strategy, I would expect it

to develop further policies in the LPS. Policy H2 of the Audlem Neighbourhood Plan (NP) relates to development outside settlement boundaries and requires that such development should be in the form of infill or be on brownfield land. Just because the NP does not include all policies in the LPS and SADP, does not mean that its policies lose relevance.

7. The appellant contends that the Council has based its decision on inconsistent policies from plans approved at different times. However, I find no inconsistencies between the relevant policies referred to in the decision notice, and on the basis of the above, I do not consider that the Council acted unreasonably in its use of the policies referred to on the decision notice.
8. Policy RUR13 of the SADP specifically states that reference to the existing building means a building as it existed at the time of submitting the planning application. In this case it would appear that some of the agricultural buildings that were to be replaced by the proposed dwelling had been removed after the application was submitted. The Council, in its deliberations, determined that since the buildings no longer existed, the proposed dwelling could not be considered as a replacement and that it, therefore, did not accord with the exception set out in Policy RUR13.
9. I have no evidence before me that all of the agricultural buildings were still in existence at the time of the application. The appellant's Design and Access Statement, submitted with the application, contains photographs of the site, but none of these show the entirety of the buildings, merely the end of the one remaining building. Nevertheless, the Council, in its costs rebuttal does not dispute that the buildings were on the site at the time the application was submitted. On this basis, the Council has failed to apply its own Policy RUR13 correctly. I acknowledge that the buildings must have been removed before the significantly amended plans were submitted, but the amendments were considered in the context of the original application, and the policy definition of 'existing building' clearly relates to the buildings at the time the application was submitted.
10. With regard to the effect of the proposal on the surrounding open countryside, I agree that there would appear to be no policy that supports protecting the open countryside for its own sake. The Council has not produced any evidence or argument that any aspects of the open countryside – visual, ecological, social etc – would be harmed by the specific physical attributes of the proposal. The fundamental policy issue on replacement buildings was, as noted above, applied incorrectly, and there was no evaluation of the effect of the design of the proposed dwelling in the context of the nature, character or appearance of the open countryside, merely in terms of the street scene and its immediate surroundings.
11. In conclusion, I find that the Council gave consideration to all relevant issues pertaining to the proposal but, in doing so, the Council incorrectly interpreted its own policy on replacement buildings and thereby failed to give due consideration to the relative scales of the existing and proposed buildings. In addition, the Council based its decision notice on the impact of the proposal on the open countryside, but has given no evidence to support the conclusion that the proposal would be harmful to the open countryside in any specific way. In the light of this, the reason for refusal has not been substantiated. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order *[where awarding costs]*

12. 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 Cheshire East Council shall pay to Pamela Brisbourne, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred with regard to the failure of the Council to provide supporting evidence for its assertion of harm to open countryside, and failure to acknowledge the existence of buildings on the appeal site at the time of submission of the application during determination of the application, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Cheshire East 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.

J D Westbrook

INSPECTOR