
Costs Decision

Inquiry held on 20-23 May and 16 June 2025

Site visit made on 19 and 22 May 2025

by **Graham Chamberlain BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th July 2025

Costs application in relation to Appeal Ref: APP/W0340/W/24/3356688

Land south of Sandhill, Hermitage, Thatcham, RG18 9XU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Black for a partial award of costs against West Berkshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for 'Change of use of land for the formation of 5 Gypsy/Traveller pitches comprising of 1 mobile home, 1 touring caravan, and 1 utility building per pitch'.
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Decision

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

Reasons

2. The application was made and responded to in writing.
3. 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.
4. The PPG also explains that a local planning authority is at risk of an award of costs if it refused planning permission on a planning ground capable of being dealt with by condition(s). In this instance, the applicant submits that the Council could have imposed conditions to address its concerns regarding highway safety and drainage.

Highway safety

5. The Council refused the proposal due to concerns about the lack of adequate visibility at the site access. This was articulated in the Council's third reason for refusal. The reason for refusal refers to the '*current forward visibility*' being inadequate and in addition '*there is*' no pedestrian link to the south. It then goes on to explain that '*this all leads to a potential threat to highway safety*'. Given the wording of the reason for refusal I share the view of the applicant that the Council was considering the existing unauthorised access rather than what was being proposed as part of the planning application.
6. Instead, the Council should have considered whether its concerns about visibility and pedestrian connectivity could be addressed through the imposition of a condition(s). In this respect, the Highway Officer was content that it could. Therefore, Officers explained in the committee report that visibility splays in relation to the surveyed traffic speeds along the B4009 in both directions are achievable, as

is a safe footway link to the south. The committee report went on to recommend conditions in respect of these matters.

7. The planning committee went against this expert advice, as it is entitled to do. However, in this instance it acted unreasonably because the reservations raised were capable of being addressed by a condition. It seems to me that the Council's real concern related to the extent of landscaping that would have to be removed to facilitate the visibility splays. These concerns are understandable as the splays detailed in the Highway Technical Notes (CD1.21 and CD5.2), as recommended by the Local Highway Authority, were excessive at 104m to the north and 64m to the south. However, the effect on the character and appearance of the area was addressed under the first reason for refusal.
8. The Council's Highway proof of evidence (CD9.13) continued to make the case that visibility splays could not be achieved because of existing landscaping. However, no evidence was submitted to demonstrate there was any legal or technical impediment to its removal. A new point was raised in relation to the speed gateway sign, but this was overstated given the ability to move it to a location outside the splay, albeit subject to a Traffic Regulation Order. In any event, the Council should have been aware of this feature from site visits or because it was referred to in the submissions. Indeed, the Council has not sought to demonstrate that there was no prospect of the splays being delivered. As such, a condition was an appropriate remedy. Indeed, during the round table session on 20 May 2025 common ground was quickly established that the splays only needed to be 43m by 2.4m and that they could be secured by condition. It was also agreed that it would be technically possible to provide a footway to the south at 1.5m in width, also to be secured by the imposition of a condition.
9. Given the foregoing, the appellant was put to unnecessary expense in addressing the reason for refusal relating to highway safety in their statement of case and proof of evidence. Instead, this should have been a simple matter of agreeing the wording of a condition, which had already been drafted in the committee report.

Drainage

10. At the time the decision was made, the development plan required surface water on all development sites to be managed in a sustainable manner. This requirement was carried over into Policies SP6 and DM20(viii) of the new Local Plan.
11. The appeal site is not in an area identified as being at medium to high risk of ground or surface water flooding and nor does the size of the site trigger the need for a Flood Risk Assessment. Moreover, the appellant had confirmed that the hard surfaces would be permeable and therefore water could infiltrate the ground. This, they argue, is sufficient detail in the circumstances to allow the matter to be addressed through a condition. The condition would have allowed more information to be submitted regarding the precise technical specification of hard surfacing. There is some force to this argument.
12. Moreover, it is also unfortunate that the Council's reason for refusal referred to existing non-permeable material on the site in its reason for refusal rather than what was being proposed. This seems to indicate that the Council may have fallen into error considering what is on site rather than what is proposed.

13. However, in this instance the Council's Drainage Officer confirmed during the Council's assessment of the application that the site may have impeded drainage due to underlying clay and that this would likely hamper infiltration. The difficulty here is that there is no alternative public surface water system within 30m of the site and no watercourse to use if infiltration is not an option. Accordingly, the Council, as advised by the Drainage Officer, requested further information from the applicant to demonstrate that infiltration is a viable drainage solution. As outlined above, this request had a basis in development plan policy.
14. Unfortunately, the information prepared by Jaxx Engineering and submitted by the applicant, particularly that relating to infiltration testing, was inaccurate. Consequently, the Drainage Officer recommended that permission is not granted until further details are provided. Officers accepted this and recommended approval subject to further information being submitted and the matter resolved (see Paragraph 7.61 of the Committee Report). However, as the planning committee voted to refuse the application on other grounds, the absence of adequate information relating to drainage also became a reason for refusal. There would have been no point deferring determination in the circumstances, especially as the Council was of the view planning harm would endure during such a period.
15. It therefore seems to me that the Council would have been willing to resolve this matter through the imposition of a condition had accurate information been submitted regarding infiltration. Such information was not submitted with the Statement of Case and came in as new late evidence in the form of a Proof of Evidence prepared by Flume Consulting Engineers (CD9.19). Upon reviewing this information, which was accurate, the Council were satisfied that it demonstrated infiltration would be acceptable despite the underlying clay soil. The Council removed its objection in a timely manner thereafter. As such, the Council did not act unreasonably in refusing the application and defending this position on appeal until new information was submitted by the applicant.

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 West Berkshire Council shall pay to Mr R Black, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to West Berkshire 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.

Graham Chamberlain
INSPECTOR