



Costs Decision

Hearing held on 4 June 2025

Site visit made on 4 June 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 July 2025

Costs application in relation to Appeal Ref: APP/U1105/W/24/3356636

Land Between Meeting Lane and Strawberry Hill, Lympstone, Devon, EX8 5DG

- 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 Nick Yeo (3West Strawberry Hill Ltd) for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the construction of 42 residential units, affordable housing, new vehicular accesses from Meeting Lane and Strawberry Lane, pedestrian access onto Meeting Lane, associated internal roadways, SuDS features and landscaping.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.

Procedural

4. The applicant's claim on procedural grounds relates to the Council's behaviour during the determination of the planning application, particularly regarding the length of time taken to process the planning application and the level of engagement and communication with the applicant during the application process.
5. Whilst the Guidance states that costs cannot be claimed for the period during the determination of the planning application, it advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, and that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

6. I appreciate the applicant's frustration in respect of the time taken to place the planning application before the Planning Committee. However, I note that prior to the Committee date there had been on-going dialogue between Council officers and the applicant, including positive pre-application discussions, and that the parties had been working towards a positive officer recommendation to the Planning Committee.
7. Moreover, the Council informed the applicant of its reasons for delaying the determination of the application following the publication of the revised Framework in December 2023 and the amended housing land supply requirements therein, which resulted in the Council seeking to resolve uncertainty that arose in respect of its housing land supply, including the extent to which it complied with the temporary 4-year requirement and whether the tilted balance should continue to be applied in cases of similar policy and accessibility circumstances to that of the appeal scheme.
8. I find that the Council's actions in this respect were reasonable having regard to the conflict of the scheme with the Council's adopted spatial strategy, the, at that time, early stage of the emerging Local Plan whereby the site had not yet been confirmed as a preferred site at Regulation 19 stage, and the Council's most recent Housing Position Statement indicating a 4.5 year housing supply.
9. Following a further resolution by the Strategic Planning Committee in July 2024, the planning application was considered at the August 2024 Planning Committee with an officer recommendation to approve, that, despite conflict with adopted policy and no requirement to apply the tilted balance, gave significant weight to the need to support housing schemes that would contribute to the Council's housing delivery beyond the next 4 years.
10. Having regard to the above, I find that the Council took a measured and reasonable approach leading up to the Planning Committee meeting, having regard to the Council's separate Strategic and Planning Committee procedures, its decision to take legal advice, the on-going changes to national planning guidance, and the particular circumstances of the appeal scheme. Moreover, it is evident that this included some collaboration with the applicant and an intention by officers to achieve approval of the scheme.

Substantive

11. In consideration of the applicant's substantive grounds for seeking costs as set out in paragraph 2.1 of its costs application, I find that in coming to a decision, members of the Planning Committee are not bound to agree with the views of council officers, so long as a reasonable case can be put forward to the contrary. The officer report to committee undertook a balanced view in favour of the appeal scheme, and the planning committee was entitled not to weigh the balance in favour of the scheme, having regard to the development plan policy conflicts it identified in its 3 reasons for refusal.
12. Having regard to the policy position at the time of the determination of the application, including the December 2023 Framework, the Council's understood position in respect of achieving its required 4-year housing land supply, the

- Regulation 18 stage of the emerging plan preparation and the absence of an extant permission to redevelop the appeal site with housing, I do not consider that the Council acted unreasonably by including its first reason for refusal in respect of conflict with the Council's adopted spatial strategy.
13. My appeal Decision explains why I have found no conflict with Local Plan Strategy 5B, and I appreciate the applicant's concern about the inclusion of a sustainable location argument within the Council's first reason for refusal, given the close proximity of the site to the settlement boundary of Lympstone which is recognised within the Local Plan as a settlement incorporating a range of accessible facilities and services.
 14. However, by the time of the applicant's lodging of the appeal, the Council had confirmed that the appeal site would be carried forward as a preferred site in the Regulation 19 phase of the emerging Local Plan and had also resolved to approve what subsequently became the May 2025 outline planning permission. As such, the Council had now accepted the principle of the residential development of the site for the appeal scheme number of dwellings. As the applicant was fully aware of this position and had already submitted evidence in respect of the accessibility of the site by means of travel other than the car as part of its planning application submission, I do not consider that the accessibility element of the Council's first reason for refusal necessitated the applicant incurring unnecessary appeal costs.
 15. Moreover, the Council acted reasonably in light of the above by deciding not to defend its first reason for refusal at appeal.
 16. Whilst the specific trees of concern are not listed within refusal reason 2, the Council's statement of case provides a detailed analysis of its concerns in respect of the protected Oak T11, confirming that this is the focus of its case. My appeal Decision, which should be read in conjunction with this costs Decision, sets out why I have reached a different conclusion on this issue than that of the Council. Notwithstanding this, I find that the Council has provided sufficient evidence to support this reason for refusal, which references Local Plan Strategies D1 and D3 which seek to ensure new development is locally distinctive by, amongst other things, not adversely affecting trees worthy of retention.
 17. I have found the Council's reference to historical tree works not to be relevant to my Decision, but I am not persuaded on the evidence before me, that this has led to the applicant incurring unnecessary costs in respect of the appeal.
 18. The accompanying appeal Decision explains why I concur with the Council's third reason for refusal having regard to the failure of the scheme to distribute the affordable housing throughout the development. I find that this reason clearly and precisely explains the Council's concerns with reference to the relevant Local Plan Strategy. There is no reference to the Council's Affordable Housing SPD in the reason for refusal, but it is evident from the applicant's planning application submissions that it was aware of this document and its relevance to the affordable housing issue at the time of the submission of the application and a lack of reference to it in the reason for refusal has not led to additional costs to the applicant in association with the appeal.
 19. The Council's appeal statement confirms that its concerns include a proposed lack of any affordable housing in the northeastern half of the development and that its

reference to a perceived obvious difference between the affordable and market housing primarily relates to the proposed higher density of development within the southwestern part of the site. Accordingly, there is no cogent evidence before me that the applicant has incurred unnecessary costs arising from any unreasonable behaviour in respect of the Council's defence of this reason for refusal.

20. The Council's appeal statement confirms that, as required having regard to the December 2024 Framework and the Council's housing land supply at the time of the appeal, it has applied the tilted balance and considers the harms arising from its second and third reasons for refusal outweigh the benefits of the appeal scheme.
21. Having regard to all of the above, although I have allowed the appeal, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.
22. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR