Planning Inspectorate

Costs Decision

Site visit made on 21 July 2025

by C Housden BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Costs application in relation to Appeal Ref: APP/M1595/W/25/3361382
Greenwise Nurseries, Vange Park Road, Vange, Thurrock SS16 5LA

- 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 JP and MD Properties Ltd for a full award of costs against Thurrock Council.
- The appeal was against the refusal of planning permission for hard surfacing of existing gravel drive with permeable tarmac.

Decision

1. The application for an award of costs is allowed 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 PPG states that awards may be either procedural which relates to the process, or substantive, which relates to the planning merits of the appeal.

4. The substantive submission made by the applicant relates to their view that the Council has taken into account matters outside the scope of the planning application, namely “how the site is being used, or rather how they fear it may be used”[1].

5. The Council in their response to the costs application agree that “the extent of unauthorised works at the site fall outside of consideration of the application. The officer's report was clear on the basis for reaching the decision”[2].

6. The Council’s officer report does contain a paragraph which states it hasn’t taken into account potential activities within the site. However, in practice the Council has clearly taken into account matters relating to how the site could potentially be operated and not the development which has been applied for by the applicant. This is reflected in the second reason for refusal, which states that the development “could support extant unlawful intensification or subdivision of the site”.

7. The Council also confirmed in its statement of case that its main concern relates to the establishment of an expanded commercial premises and the appeal proposal would facilitate sub-division over time[3].

[1] Costs letter by Smart Planning dated 02 May 2025
[2] Thurrock Council response to the application to costs email 21 July 2025
[3] Paragraph 3 of Further Statement of Case by Thurrock Council

8. These are matters which fall outside the scope of the development that was applied for by the applicant. The applicant has only applied for a tarmac road to replace an existing gravel road. Any use or operation that fall outside the lawful use of the site or development that could be undertaken at the site in the future is not relevant to this appeal.

9. In relation to the first reason for refusal, the Council's officer report grapples with paragraph 154(g) of the National Planning Policy Framework (the Framework) and Policy PMD6 of the Thurrock Core Strategy and Policies for Management of Development (2015) (CSPMD), as I have done in my decision letter. However, the assessment of the Council in relation to the effect on the Green Belt clearly refers to the proposal enabling a "more extensive and intensive use of the site"[4]. The Council does not assess the development for what it is, a tarmac road replacing a gravel road within the site.

10. The Council's first and second reasons for refusal were therefore not well founded, being based on inaccurate assertions about the impact of the proposal which was not supported by an objective analysis of the development. Therefore, substantive unreasonable behaviour as described in the PPG has been demonstrated on the part of the Council. This has resulted in the applicant's unnecessary expense in contesting these two reasons for refusal.

11. In relation to the third reason for refusal, the applicant states in their costs application that no evidence has been provided to support this reason for refusal. However, the Council's officer report clearly exercised planning judgement on the effect of the proposed tarmac road on the character and appearance of the area. In the case of the third reason for refusal, the assessment contained within the officer report does not refer to the potential future operations or development of the site and is therefore based on an accurate interpretation of the development.

12. Whilst I have come to a different conclusion to that of the Council, the third reason for refusal is substantiated by the reasoning contained within the officer report. Therefore, the Council has not demonstrated substantive unreasonable behaviour as described in the PPG resulting in unnecessary expense in relation to the third reason for refusal.

13. The applicant also suggests that unreasonable behaviour has occurred given the application was a result of discussions with the Council's Environmental Health Officer (EHO) and the Council does not refer to these discussions that took place prior to the planning application being submitted.

14. Whilst the officer report does not specifically refer to these previous discussions between the applicant and the EHO, these discussions do not affect the planning merits of the appeal. Therefore, no substantive unreasonable behaviour has occurred in this regard which has led to wasted expense at the appeal.

15. The applicant also considers that the Council took an unreasonable approach to decision making over whether it considered the site to be previously developed land, if the development amounted to an engineering operation, stating that very special circumstances are required and making unsubstantiated assessments against the various development plan policies listed in the decision notice.

[4] Officer report for 24/00193/FUL page 11

16. In the first instance I note the officer report does consider the site to be previously developed land. I have already found that it was unreasonable for the Council to take into account matters relating to potential future operations and development of the site in relation to its Green Belt assessment. Therefore, the resulting assessments against development plan policies on matters relating to Green Belt are inherently unreasonable no matter what evidence the Council used to substantiate its assessments. Unreasonable behaviour leading to unnecessary expense has occurred for the reasons I have previously given.

17. I have also already found that the Council was able to substantiate its third reason for refusal against the relevant development plan policies, so no unreasonable behaviour leading to wasted expense has occurred in this regard.

18. Further matters of unreasonable behaviour alleged by the applicant relate to matters such as inaccurate references to the planning history and the Council's position over the locational sustainability of the site. However, these matters don't relate to the substantive main issues of the appeal nor formed part of the Council's reasons for refusal. As such these matters have not resulted in unreasonable behaviour which has led to wasted expense at the appeal.

Conclusion

19. For the reasons given above, unreasonable behaviour resulting in unnecessary and wasted expense has occurred in respect of the applicant contesting reasons for refusal 1 and 2 and a partial award of costs is therefore warranted.

Costs Order

20. 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 Thurrock Council shall pay to JP and MD Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting reasons for refusal 1 and 2; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to Thurrock 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.

C Housden

INSPECTOR