
Costs Decision

Site visit made on 19 August 2025

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2025

Costs application in relation to Appeal Ref: APP/T0355/W/25/3360693

Land South of Kimbers Lane, Maidenhead, SL6 2QP

- 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 Staxlink Ltd for a full award of costs against Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of outline planning permission for the access and layout for 32 dwellings.
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Decision

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

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 considers that the Council has acted unreasonably on both procedural and substantive grounds in relation to each of its 11 reasons for refusal. Consequently, they consider that the Council has prevented development that should clearly have been permitted.
4. The applicant raises a number of points which I will address individually. First during the course of the Council's consideration of the planning application a revised plan was submitted by the applicant to address the Council's concerns regarding the pedestrian link. These concerns were discussed in a Teams meeting between the Council and the applicant on 14 May 2024. However, the Council declined to accept the plan. The Planning Practise Guidance (the PPG) states that it is at the discretion of the local planning authority whether to accept such changes. This is not therefore unreasonable behaviour. Neither does it demonstrate a lack of co-operation, particularly given that a Teams meeting was held to discuss the application.
5. The applicant considers that the Committee Report (CR) that was considered by the Planning Committee at its meeting on 14 July 2024 contained information that was untrue or inaccurate. This was brought to the officers' attention by the applicant but was not updated or corrected prior to the meeting. Consequently, the Planning Committee made its decision on information that was wrong.
6. Paragraphs 10.159-10.165 of the CR deals with the effect of the proposal on protected species and in particular bats. Although the CR correctly identifies that

three automated surveys are required at paragraph 10.161; it mistakenly goes on to state that emergence surveys would be required at paragraph 10.164 when the applicant's Preliminary Ecological Appraisal discounts any requirement for these. This mistake is continued into the reason for refusal. While the CR and subsequent reason for refusal are not accurate in terms of the type of survey that would be required, the comments from the Council's ecologist are clear that the activity surveys would be required prior to the determination of the application, or if not received, their absence form a reason for refusal. It is regrettable that the wrong survey was alluded to in the CR and the reason for refusal, but the absence of reports would have been a reason for refusal in any case. I have carefully considered whether a condition could have been applied. However, as the application required the consideration of access and layout, then it is imperative that the results are known prior to determination to ensure that the access and layout would not cause harmful impacts. I have found that they would. Consequently, the applicant has not been put to unnecessary or wasted expenditure in this regard.

7. Paragraphs 10.33 to 10.39 of the CR refer to Policy QP3 of the Borough Local Plan (BLP) and the Borough Wide Design Guide (BWDG) with regard to parking associated with the development. Although the policy and guidance advocates for parking to the side of dwellings the principal is that developments be designed to minimise the visual impact of traffic and parking. While paragraph 10.37 of the CR states that the proposal is in direct contradiction to Principles 6.7 and 6.8 of the adopted BWDG it goes on to say that the principles make it clear that on-plot parking should *generally* be provided to the side of rear of the property (my emphasis). The CR also considers at paragraph 10.38 that opportunities for landscaping to break up the front parking would be limited and therefore, it did consider whether parking to the front that was proposed would be acceptable. Although I have disagreed with the Council, I consider this to be a matter of interpretation of the policy and guidance, and I am satisfied that the Committee were not misled on this point. Therefore, the Council has not acted unreasonably.
8. Paragraph 5.4 of the CR states that the proposed blocks that are situated either side of the access road are situated on average at 9.5 metres from the northern boundary of the site; which narrows to 5.5 metres at its closest point on the north western proposed block. The applicant disputes this and provides their own measurement. It appears that the discrepancy lies in the position where the measurements have been taken from. The Council measures to the northern edge of the appeal site and the applicant to the edge of the road. The Council made it clear in its CR that the measurements were to the northern boundary of the site. The Council has not therefore acted unreasonably in this respect. Irrespective, I have found harm using the measurements supplied by the applicant.
9. The Highway Authority raised concerns with the proposal and a revised plan was submitted by the applicant to address those concerns on 15 July 2024. However, the revisions were not reported to the Planning Committee at its meeting as the Council considered that due to other insurmountable issues with the proposals the matter should not be progressed. As I have already stated it is the choice of the Council whether to accept revised plans. Consequently, the Council has not acted unreasonably in this respect. Furthermore, it confirmed in its statement of case that the revisions are acceptable and therefore the reason for refusal regarding highway matters has not been pursued.

10. Paragraphs 10.69-10.76 of the CR deals with the provision of open space on the appeal site. It is a policy requirement of the Borough Local Plan 2013-2033 adopted 2022 (the BLP) that sites such as the appeal site should provide both a Local Area of Play (LAP) and a Local Equipped Area of Play (LEAP) due to the proposed number of dwellings. The Council considered that due to the proximity of the LEAP on the adjacent site then the provision of one could be discounted on this site. However, due to the distance to LAPs on nearby sites being above the recommended distance, then the lack of a LAP on the appeal site was a reason for refusal. Although I have disagreed in my decision, this is a valid decision by the Council given the policy requirement and shows that it did consider the proximity of other LEAPs and LAPs. The Council has not acted unreasonably in this respect.
11. Paragraph 1.3 of the CR states that “Owing to these significant concerns, the case officer has not progressed a S106 agreement in order to satisfactorily secure provision of affordable housing, public open space, adoption of roads and other matters”.
12. Although the PPG encourages legal agreements to be progressed as early as possible in the planning process, it is not unreasonable for the Council to not progress matters, if it considered that there was no prospect of the proposals receiving support. I note though that the Council has not engaged with the applicant during the appeal process in order to finalise a legal agreement and this is unreasonable behaviour. Due to the lack of co-operation from the Council, the applicant has had to prepare a Unilateral Undertaking to secure the affordable housing. However, there has been no unwasted expense as the applicant would have had to prepare a legal agreement whether the planning application was granted or refused.
13. Paragraph 10.117 of the CR states that “The rear gardens of these properties located to the southern portion of the site range from c. 50 sqm which would fail to meet the minimum garden sizes for 2/3 bedroom properties and substantially short if these properties were provided as 4+ bedrooms; as illustrated in the supporting documentation”. The Council has clarified that this relates to a rectangular portion of the rear private garden excluding areas which it considers are not unusable such as access routes to cycle stores, side gardens and land in between dwellings. Principle 8.4 of the BWDG states that private outdoor space should be roughly rectangular in shape. It is clear therefore that the minimum outdoor amenity space size standards should be private space and therefore that within the rear garden. I have disagreed with the Council in this respect, considering the gardens as measured by the applicant to be acceptable and not so sufficiently unrectangular for the whole of the garden to be unusable. However, this is a valid consideration and a matter of judgement on which the Council was entitled to reach its conclusion given the wording of the BWDG.
14. Paragraph 10.121 of the CR states that “the extant permission to the south of the site (23/00511/FULL) establishes rear gardens of 12 metres to the boundary. The proposed layout of the properties would establish a rear garden depth of c. 7.5 metres (including boundary vegetation); setting a total separation distance of c. 19.5 – 20 metres”.
15. This is the correct distance when measured between the two properties. The applicant submits that the distance should be longer, but this is when measured from the rear of the 2.5 storey element of the building rather than the single storey

part. The BWDG states that a minimum distance of 20m is the Council's generally accepted guideline for there to be no material loss of privacy between the rear of two storey buildings directly facing each other (i.e. a back-to-back relationship). This guidance relates to two storey buildings, not single storey.

16. It would have been helpful with regard to both of these issues for the Council to set out in its CR how the figures had been obtained and provide the detail that was subsequently provided in its appeal statement together with the figures provided by the applicant prior to the meeting so that the Committee could have made a more considered decision based on the applicant's submission. This is unreasonable behaviour.
17. Paragraph 10.56 of the CR states that "The Local Planning Authority's Tree Officer advised in verbal consultation on 16th May 2024 that the loss of a group of category B trees along the eastern boundary appears to not be justified within the Arboricultural Impact Assessment."
18. This was based on the applicants initial Arboricultural and Planning Integration Report February 2024 (the APIR), which shows on the associated plan that trees to be removed on the eastern boundary are category B trees. Although the accompanying written survey lists them as Category C2, this discrepancy was not rectified until the applicant submitted a revised APIR on the 10 June 2024. It is not clear if the Council made any assessment of its own of the trees. However, the revised APIR was received by the Council prior to the consideration of the Committee on 24 July 2024. Hence the information should have been clarified and updated in the CR. This is unreasonable behaviour by the Council.
19. I accept that the Council's reason for refusal does not relate specifically to the category of tree to be removed or placed under pressure. However, this does not negate the fact that the CR was incorrect.
20. At paragraph 10.155 the CR states that "The submitted supporting BNG Assessment recommends that 'all boundary trees' are retained. However, the submitted layout plan seeks their removal contrary to the applicant's own Ecologist's advice. Such a proposal appears to be made on the assumption that such losses can be compensated. An assumption that is contrary to adopted policy." However, this is not contained in the Biodiversity Net Gain Assessment dated February 2024 which is before me. The Council do not comment on this matter, so I have to conclude again that this error is unreasonable behaviour.
21. I have found incidences of unreasonable behaviour. Principally these relate to the contents of the CR. In the case of the applicant's updates regarding distances and the way garden space had been calculated the CR could have been a lot clearer and fairer in the way the cases were reported. With regard to the category of trees to be removed and BNG the CR contained wrong information. In addition, although the Council considers that the correct planning balance was applied in the CR, it is my understanding that it is unable to demonstrate a five-year housing land supply. As a consequence, paragraph 11dii of the Framework is relevant and should have been applied. This was not done and is also unreasonable behaviour.
22. It may have been that had members had all of the information and the correct information and understood the benefits of the proposal they would have made a different decision, and an appeal would not have been necessary. However, I cannot be sure, especially given that there are 11 reasons for refusal and I have

agreed with the Council on some of them. Furthermore, even applying paragraph 11dii of the Framework I have concluded that the appeal should be dismissed. Moreover, regarding the matters on which I have agreed with the applicant, much of the information contained in the appeal statement had already been supplied to the Council during the course of the planning application. Consequently, I conclude that there has been no wasted or unnecessary expense.

23. The CR was published on the 10 July 2024, 5 working days before the meeting on the 21 July. The applicant states that this was the first that they were aware of five reasons for refusal that had not been raised in any correspondence or in the Teams meeting. Four of those reasons relating to the removal of trees, garden space, living conditions and Local Areas of play, the applicant believes are based on incorrect facts. I have already discussed these matters above. The fact that the applicant was not aware of the reasons for refusal is unhelpful but not unreasonable.
24. The National Planning Policy Framework states that local planning authorities (LPAs) should work pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. However, LPAs are also encouraged to determine planning applications within a strict timescale. Consequently, the Framework also promotes early engagement through good quality pre-application discussion which enables better coordination between public and private resources and improved outcomes for the community and enables the resolution of more issues. I understand in this instance no such preapplication was submitted. Furthermore, a Teams meeting was held between the applicant and the Council to discuss the application. Therefore, I do not consider the Council has acted unreasonably in terms of the informative on the decision notice.
25. The applicant considers that the Council's Statement of Case raises new reasons for refusal in respect of lack of infrastructure, Biodiversity Net Gain and flooding. However, the Council has raised BNG and flooding for information purposes, both can be adequately dealt with through the imposition of a condition. There is no unreasonable behaviour or wasted expense here.
26. The lack of an infrastructure contribution as required by Policy QP1b was not a reason for refusal but was referred to in paragraphs 10.170-10.173 of the CR. In addition, the applicant had submitted a draft S106 agreement to address these matters, but which was not progressed by the Council due to other unsurmountable issues. This is not therefore a surprise to the applicant. The fact that the matter was not included as a reason for refusal is unreasonable behaviour. However, there has been no wasted expense as the applicant would have had to prepare a legal agreement whether the proposal was granted or refused by the Committee.
27. The applicant submits that in most instances the proposals have been treated differently to those proposed on surrounding sites. It is true that a consistent approach is necessary to determining planning applications. However, in this case the site is within a development framework which has been applied to all of the applications within the allocation. I have determined the appeal in accordance with the evidence before me and my observations on site. I have considered evidence from other sites and applied it accordingly.

28. While I have disagreed with the Council in some instances, I have agreed with others and found harm. It is not the case therefore that the development should clearly have been permitted. Furthermore, I have been able to understand the Council's case from the submitted CR and its Statement of Case, with reference to policies from the development plan which clearly details the impacts and concerns. I have also found that there are no circumstances where a condition could reasonably have been applied instead of a reason for refusal.
29. For the reasons above I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application is refused.

Zoe Raygen

INSPECTOR