



Costs Decision

Site visit made on 11 June 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2025

Costs application in relation to Appeal Ref: APP/H1515/W/25/3360423

Land At Priests Lane, Brentwood, Essex, CM15 8HG

- 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 Cala Management Limited for a full award of costs against Brentwood Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing pavilion and construction of 97 dwellings including access, car parking, cycle and bin storage, public open space, landscaping and associated works.
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Decision

1. The application for an award of costs is partially 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 application is made on substantive grounds. The initial costs application refers to the Council failing to substantiate its reasons for refusal and for failing to take considerations such as housing land supply into account. However the appeal is against the failure of the Council to determine the application. The Council has not sought to argue against the principle of the proposed development and its initial officer report to committee refers to the Written Ministerial Statement of 30 July 2024 and explicitly refers to the 'most acute housing crisis in living memory'. The importance of housing delivery was therefore part of the information before the committee in its initial discussion of the application and in its decision regarding putative reasons for refusal.
4. Brentwood Local Plan 2016-2033 (adopted March 2022) (BLP) Policy R19 clearly allocates the site for development and the evidence before me demonstrated that allocation included the existing access point to Priests Lane. The oak tree (T23) at that access point is a large, mature tree which would have been fully apparent at the time the site was allocated. The access road is largely unmade and it is evident that any use of this access to serve the allocation would require considerable construction works. The evidence submitted to the appeal showed that investigations had been carried out to establish if the tree could be retained. No evidence to counter this was submitted. The Council, in defending this claim, has pointed out the proposal provides only one access point. However, there was no requirement for the allocation to come forward as a whole and this access point is

included within the allocation. While the loss of T23 is unfortunate, it is an inevitable consequence of the allocation of the site, a fact which is acknowledged in the comment from the Council's arboricultural consultee. Nor is it apparent how, given the width of the access, the layout of surrounding development and the need for suitable visibility, how any replacement planting could be sited proximate to Priests Lane. As such, relying on this as a putative reason for refusal would equate to preventing development which should clearly be permitted having regard to the development plan. This amounts to unreasonable behaviour on the part of the Council and the applicant has been put to wasted expense in responding to this.

5. Putative reason for refusal 3 concerned the lack of pedestrian and cycle connections via St Andrews Place and Bishops Walk. BLP Policy R19 does not require the allocation to come forward as a whole. The proposed layout allowed for a connection through to the remainder of the allocation. I also note that the appellant offered a contribution in their original statement of case towards further connection works if and when the remainder of the allocation came forward. While this does not feature in the signed planning obligation, the Council has signed the obligation. They have not provided any evidence to demonstrate that they sought to have this clause re-introduced or that there were any further discussions in this regard.
6. I noted the open nature of some of the land adjacent to the site at St Andrews Place. However, the committee report confirms this land is in private ownership. While BLP Policy R19 refers to access points via Priests Lane, a second access point would be via the remainder of the allocation. There is no reference to St Andrews Place, nor does the allocation provide any direct connection to the highway. There is no reason that the appellant should be required to provide a further access along this boundary, or for them to provide evidence of negotiations towards securing this. Notwithstanding, the site layout would clearly allow for access to be provided in the future. The Council behaved unreasonably in putting forward this third putative reason for refusal, and the applicant has been put to wasted expense in defending it.
7. The Council does refer to BLP Policy HP03 with respect to its second putative reason for refusal. There is an inherent inconsistency in the Council's rebuttal which acknowledges that the policy does not apply to this proposal as the site is allocated, but then suggests it helps to understand the reasons for a design led approach. BLP Policy R19 sets out the specific policy requirements for this site, and any further understanding of the design approach required for development is set out in BLP Strategic Policy BE14. The Council therefore behaved unreasonably in this respect. However, the wider concerns the Council expressed regarding the density of the proposed development were a legitimate exercise of planning judgement in light of the allocation policy and the advice in the Essex Design Guide, even though I did not reach the same conclusion in my decision. It was therefore necessary for the design approach to the site to be addressed by the appellant. I therefore find that this has not resulted in any wasted expense to the applicant.
8. The Council has clearly mis-represented paragraph 11c) of the National Planning Policy Framework in its response to this claim. However, this did not form part of their case in defending the appeal and represents only a brief paragraph in their response to this claim. Consequently, I do not find this to be unreasonable behaviour.

Costs Order

9. 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 Brentwood Borough Council shall pay to Cala Management Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to putative reasons for refusal 1 and 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Brentwood Borough 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.

Jennifer Wallace

INSPECTOR