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## Costs Decision

Site visit made on 4 September 2025

**by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 16 SEPTEMBER 2025**

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### **Costs application in relation to Appeal Ref: APP/N1920/W/25/3367473**

#### **117 Cranborne Road, Potters Bar, Hertfordshire, EN6 3AQ**

- 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 Bill Corbett for a full award of costs against Hertsmere 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 the erection of a new two storey detached dwelling.
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### **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
  - the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural<sup>1</sup> or substantive<sup>2</sup>. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award<sup>3</sup>.
4. The application for costs by the appellant is based on procedural and substantive grounds in that it alleges the Council acted unreasonably in; - (1) not determining the application within the statutory timeframe; and (2) preventing or delaying development that should clearly be permitted, in a manner inconsistent with other planning application decisions.
5. In accordance with section 38(6) of the 2004 Act<sup>4</sup> and section 70(2) of the 1990 Act<sup>5</sup>, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.

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<sup>1</sup> Paragraph: 047 Reference ID: 16-047-20140306, Revision date: 06 03 2014

<sup>2</sup> Paragraph: 049 Reference ID: 16-049-20140306, Revision date: 06 03 2014

<sup>3</sup> Paragraph: 032 Reference ID: 16-032-20140306, Revision date: 06 03 2014

<sup>4</sup> Planning and Compulsory Purchase Act 2004 (as amended)

<sup>5</sup> Town and Country Planning Act 1990 (as amended)

6. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs. It also states that where a planning application has been refused for a proposal that is not in accordance with development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

*Ground 1: Not determining the application within the statutory timeframe*

7. The only material difference between the appeal scheme and the earlier development granted planning permission<sup>6</sup> was a slight increase in width, which did not raise any unusual or novel issues that would warrant;- (1) a change in the response of any technical consultees from the previously approved application; or (2) significant additional consideration by the case officer.
8. Furthermore, the appeal scheme was submitted to the Council on 18 December 2024, a relatively short time after the previous approval on 17 May 2024, and there is no evidence before me to indicate that the Council was aware of a change in circumstances between the two dates, be it from a policy perspective or an on-the-ground contextual assessment.
9. The Council states that it could not determine the application because it had not received the consultation response from the Arboricultural team and had to chase this on a number of occasions. It also states that it had to await the response as this consultation had occurred for the previously consented scheme at the site and it was important for officers to understand that there were no objections in terms of trees and whether any mitigation measures were necessary.
10. I do not agree with the Council that it was necessary to await the response of the Council's Arboricultural Team as; (1) this consultee had already been consulted in respect of the previous (and recently) consented scheme at the site and there is no evidence before me that they had made any objections to it; (2) the appeal scheme was not positioned closer to any trees the Council wished to protect than the previous proposal; and (3) there is no evidence before me that the appellant's Arboricultural statement was different in substance to that submitted for the previously consented scheme in terms of assessment and recommendations.
11. In light of the above, I consider it unreasonable of the Council to have taken longer than the statutory timeframe to determine what should have been a simple and straightforward application. The application for costs on this procedural ground therefore succeeds.

*Ground 2: Preventing or delaying development that should clearly be permitted, in a manner inconsistent with other planning application decisions*

12. As outlined above, there was;- (1) only a limited difference between the appeal scheme and the development previously granted planning permission; and (2) no material change in policy or contextual circumstances between approval of the previous scheme and submission of the new one. In my view, the Council paid insufficient regard to the extant planning permission (which had only recently been

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<sup>6</sup> Council ref: 24/0303/FUL approved on 17 May 2024.

approved) when considering the new application, which was a significant material consideration clearly indicating the new proposal would be acceptable.

13. Furthermore, the evidence shows that the Council's Arboricultural response was dated 24 April 2025, whereas the appeal was made by the appellant on 11 June 2025. This means that the Council had nearly 7 weeks to determine the application prior to the appeal being submitted, but failed to do so.
14. I recognise that the submitted drawings for the appeal scheme failed to show provision for any privacy screens or appropriate boundary treatments as per the previously approved development. However, it was within the Council's power to approve the new scheme with a planning condition requiring details of this if it considered such measures necessary.
15. In light of the above, I consider it unreasonable of the Council to have prevented and delayed development that should clearly have been permitted. The application for costs on this substantive ground therefore also succeeds.

### **Conclusion**

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted. This should cover the expense of engaging a planning consultant to prepare and submit the planning appeal & associated costs application.

### **Costs Order**

17. 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 Hertsmere Borough Council shall pay to Mr Bill Corbett, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Hertsmere Borough Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Robert Fallon*

INSPECTOR