Costs Decision

Site visit made on 13 August 2025

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2025

Costs application in relation to Appeal Ref: APP/N1025/W/25/3362579
Land off Little Hallam Hill
Grid Ref Easting: 446287; Grid Ref Northing: 340581

- 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 Village Partnerships Ltd (in liquidation) for a full award of costs against Erewash Borough Council.
- The appeal was against the refusal of full planning permission for the erection of affordable homes (Class C3), together with associated parking, landscaping, drainage, the layout of roads, footways and other associated works.

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 PPG makes clear that costs may only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It is not sufficient to demonstrate unreasonable behaviour alone. There must be a clear link between that behaviour and the incurrence of unnecessary costs.

4. As detailed in the accompanying appeal decision, the Council's decision to refuse planning permission was based on the applicant's failure to secure financial contributions towards infrastructure, specifically secondary education and open space, which were considered necessary to make the development acceptable in planning terms. The Council's officer report set out the policy basis for these contributions. The report also explained that the contributions had been calculated using standard formulae and were supported by consultation responses from, among other parties, the local education authority.

5. The applicant argues that the Council failed to properly apply the tilted balance under paragraph 11.d) of the National Planning Policy Framework (the Framework), and it is acknowledged that the officer report did not explicitly set out this process. However, the accompanying appeal decision has undertaken the balance in full, including the application of paragraph 11.d), concluding that the adverse impacts of granting permission without securing the necessary infrastructure contributions would significantly and demonstrably outweigh the benefits, when assessed against

the policies in the Framework taken as a whole. Therefore, although the Council did not explicitly refer to the application of the tilted balance in its decision-making, the outcome of the appeal confirms that the refusal was justified on planning grounds.

6. The applicant also contends that the Council relied on a viability assessment that referenced a JCT contract which did not exist. Whilst the appeal decision acknowledged that this raised questions about the robustness of the Council's independent viability review, it also found the applicant's own Financial Viability Assessment to be insufficiently robust. As a result, the viability evidence presented by both main parties was afforded only limited weight in the appeal. Additionally, concerns regarding the scheme's deliverability further reduced the weight that could be attributed to its benefits.

7. It is agreed that the Council could have more clearly articulated the planning balance and the presumption in favour of sustainable development in its decision. However, the absence of this explicit analysis does not, in itself, constitute unreasonable behaviour that directly led to unnecessary or wasted expense. The applicant was aware of the Council's position on infrastructure contributions, and this disagreement meant the prospect of an appeal was a likely foreseeable outcome. The applicant chose to appeal the decision in full knowledge of the dispute over viability and the absence of a completed legal agreement.

8. The PPG states that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, or if they rely on vague, generalised or inaccurate assertions. In this case, the Council's refusal was based on specific, quantified infrastructure requirements supported by adopted policy, guidance, and consultation responses. The refusal was not vague or unsupported, and the appeal decision confirms that the development could not be considered acceptable without those contributions.

9. In summary, whilst there may be an argument for some procedural shortcomings in the Council's decision-making, there is insufficient evidence to demonstrate that this resulted in unnecessary or wasted expense in the appeal process. The appeal was always likely, given the unresolved dispute over viability and the absence of a completed mechanism to secure the contributions. The appeal decision confirms that the development would not have been acceptable in planning terms without those contributions, and that the refusal was ultimately justified.

Conclusion

10. For the reasons given above, I conclude that the application for an award of costs should be refused.

P Storey

INSPECTOR