



Costs Decision

Hearing held on 30 July 2025

Site visits made on 29 and 30 July 2025

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2025

Costs application in relation to Appeal Ref: APP/R1038/W/25/3361536

Land north of Burns Drive and east of Southfield Drive and on the northern and southern sides of Chesterfield Road, Dronfield S18 1YP

- 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 W Redmile & Sons Ltd for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for residential development of 132 dwellings (Use Class C3), with highways, landscaping and associated works.
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Decision

1. The application for a full 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. The PPG also indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense, and this can relate to the entire appeal or only part of the process.
3. Unreasonable behaviour can be either substantive (relating to issues arising from the merits of the appeal) or procedural (relating to the process) in nature. The PPG gives examples of the types of behaviour that could give rise to a substantive or procedural award of costs against a local planning authority. They are not exhaustive but include lack of co-operation with the other party; not agreeing a Statement of Common Ground (SOCG) in a timely manner; preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

The applicant's case

4. In summary, the applicant considers the Council has acted unreasonably by formulating indefensible refusal reasons. In terms of the first refusal reason relating to the design of the development, the Council has been inconsistent and unreasonable with its demands, strayed beyond policy and guidance and left the applicant not entirely sure what the Council's final position was and having to address a 'moving target'. The Council's approach to Green Belt and 'doubling up'

compensatory measures was unreasonable, as was the pursuit of an openness argument based on 4 manhole covers for the underground tank. This reason should have been withdrawn. The third reason for refusal relating to separation distances and amenity was wholly unreasonable as the Council agreed separation distances were within policy limits but then said it was not sufficient and refused. A new refusal reason relating to housing mix and affordable housing was presented in the Council's appeal statement, with no explanation for its unreasonable inconsistency when the same planning officer had been previously satisfied. The applicant contends that they have been forced to prepare for a shifting and unclear case that has led to significantly increased costs, time and effort spent in preparing for the hearing.

The Council's case

5. In response the Council says that it repeatedly raised its design concerns, including those of the design consultants it commissioned (PJA), with the applicant but that they chose not to address them fully. A disagreement on design does not amount to unreasonable behaviour. The Council did not pursue the doubling-up compensatory measures as a result of keeping the case under review. The applicants did not have a witness at the hearing to specifically address this point, whose work was not then needed, so there was no evidence that the loss of this small part of the Council's case incurred any wasted or unnecessary costs. With regards Green Belt openness arising from the underground tank, the applicant had offered little detail as to principles of the methodology for undertaking the excavations and the applicant's witness had to explain the plan to the Inspector. The use of the separation standard has never been about its rigid application. The Council acknowledged it applies to separation distances and not specifically overlooking. However, it used it as a proxy to apply its judgment, as it was entitled to do, to consider that some plots would be overlooked or would overlook.
6. The new reason in relation to affordable housing was brought about as a result of the applicant's conduct in stating in their appeal statement that not all of the affordable housing would now be on site and that the remainder would be a financial contribution secured via the S106 legal agreement, without any evidence to show that on-site provision would not be possible. There is no procedural unfairness – the SOCG was prepared a month before the hearing allowing time for continued negotiation. The Council has behaved entirely reasonably. Furthermore, the applicant has not set out any wasted or unnecessary work that has been undertaken and so the second limb of the test is not met.

Reasons

7. Policy LC1 lists the allocated housing sites and gives some commentary on the key aspects of each site developers ought to be aware of. It is not intended to provide detailed design advice as there are other development plan policies that do that as well as the Council's "Successful Places" supplementary planning document (the Design SPD) which is a comprehensive 'Guide to Sustainable Housing Layout and Design'. It includes a clear 4-step approach that should be undertaken to produce a successful development design.
8. The applicant engaged in pre-application advice with the Council and the Design: Midlands Design Review Panel (Design Midlands). Some of that advice was taken on board. During the determination of the application the applicant also had the

benefit of an independent design review from design consultants PJA, whom the Council commissioned, and who also reviewed later amendments the applicant made. The wealth of design advice had a common message - a full and proper assessment and analysis of the context of the site and the wider area, including all constraints and opportunities had not been done as a basic starting point that would inform the design, and that the 4-step approach set out in the Design SPD had not been carried out, which was repeatedly asked for.

9. Consequently, any changes made to rectify an unsatisfactory part of the development would likely result in knock-on changes elsewhere on the site, and these were not necessarily better and did not address the overall concerns the Council had (and indeed Design Midlands had expressed early on at pre-application stage) that the approach had been road-driven rather than place-driven. The resulting knock-on effects of a series of changes made on a piece-meal approach would then appear as another list of issues to address. This goes some way to explaining the appellant's criticism of the Council's apparent inconsistent approach and changing advice after it has sought to make changes. As a result there continued a process, I imagine that was frustrating to both parties, whereby matters were raised to be addressed, changes were made, but were met with more dissatisfaction, all because the fundamentals of the design process was not properly addressed at the start. The parties agree it is not for the Council to design the scheme. However, the applicant received a significant amount of useful and detailed design advice from the pre-application stage through to determination that they should have been able to use to create a scheme that would meet with the Council's approval. I heard from interested parties at the hearing how they too found the design unsuitable for a number of reasons. If the advice has not been heeded or acted on, then no meaningful progress can be made.
10. As the 4-step approach to designing the development had not been undertaken, I disagree with the applicant's statement that "there is no other viable way to develop the appeal site". I find the Council provided the applicant with substantial design advice in order to secure a well-designed development for this prominent and topographically challenged site that would become the new town/country edge of Dronfield, in the pursuit of proper planning. This does not amount to unreasonable behaviour on the part of the Council.
11. The Council pursued both its Green Belt arguments in its Appeal Statement and the applicant had done the same in their Statement. In light of the lack of guidance in Policy LC1 as to what Green Belt compensatory measures would entail, the Council was entitled to use its judgement. I found, as did the Council, that some of the applicant's proposed measures were not compensatory. However, I found the Biodiversity Net Gain proposed for the land on the north side of Chesterfield could be considered compensatory. The Council was entitled to consider the underground tank would have some spatial impact on the openness of Green Belt, in the absence of a definition of openness. The application lacked clear details as to what the land would look like afterwards, as there were no plans or sections that were easy for non-engineers to understand. Indeed at the hearing I had to ask the applicant's witness to explain the various sections to me, who agreed that the application would have benefited from a simplified section to aid understanding. A difference of approach and outcome does not mean there has been unreasonable behaviour.

12. For the amenity refusal reason, the policy requires consideration of overlooking. In the absence of a specific standard the Council used the 21-metre separation distance as a rule of thumb to guide its planning judgement in this instance, fully acknowledging this. This seems, in my view, a reasonable thing to do. Indeed the Council's Design SPD clearly explains how to approach separation distances where sloping ground and difference in levels would aggravate overlooking problems, suggesting that separation distances may need to be extended in certain situations such as sloping topography. The matter was also highlighted in the PJA design review, and I too found the relationship of the dwellings to be inadequate. I am satisfied the Council did not act unreasonably in this regard.
13. A new reason for refusal came about after the exchange of appeal statements when the applicant said it would now provide 31 affordable homes on site and the balance as a financial contribution secured by the S106. The applicant also specified that the affordable housing provision would only be as 1 and 2-bedroom apartments, and all of them would be for affordable rent.
14. This was news to the Council, who up until then had understood that the full quota of affordable housing would be provided on site. Indeed it says so in its report to the Planning Committee that "*The applicant has agreed to provide 30% of affordable housing on site*" but that the "specific mix and tenure" had yet to be agreed.
15. The Council acknowledged the development would deliver a mix of house types, as there would be apartments, bungalows, detached and semi-detached properties, with a mix of sizes in the form of 1, 2, 3, 4, 5 and 6 bedroom units across the site. It also reported in its Committee Report that its preference would be for the majority of the affordable homes to be for affordable rent and smaller percentage for affordable home ownership. At the time of the Committee Report the Council had not agreed the tenure, as the applicant states.
16. In light of the applicant's change of position the Council, rightly in my view, reviewed its housing information and scrutinised the affordable provision in more detail, including the national Space Standards if all the affordable accommodation was to be as apartments. It found the overall provision was unsatisfactory and this became a matter of disagreement between the parties in the subsequent SOCG and hence became another reason for refusal. I find the Council's approach to be entirely reasonable in the circumstances and does not represent an about-turn or inconsistent approach. As the applicant has advanced a new affordable housing position with little justification, they should not have been surprised if the Council took a different position and elevated the matter to another reason for refusal. It is disingenuous of the applicant to suggest that the same Council officer therefore took an opposite position. This issue was of the applicant's making. I accept that that the SOCG should have been submitted sooner, but the Council was faced with the new refusal reason. That said, the SOCG was submitted a little more than a month before the hearing and does not appear to have disadvantaged the parties. Indeed the submission of the S106 was delayed, following the appellant's new stance on affordable housing, with a final draft only prepared just before the hearing.
17. Overall, I find the Council has not behaved unreasonably. Consequently, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

18. I find that unreasonable behaviour, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K Stephens

INSPECTOR