
Costs Decision

Hearing opened on 18 June 2025

Site visit made on 13 August 2025

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2025

Costs application in relation to Appeal Ref: APP/X0360/W/25/3359928

Land at Heathlands Road, Wokingham RG40 3AR

- 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 Wokingham Borough Council for a partial award of costs against. Maverick Properties Ltd.
 - The appeal was against the refusal of outline planning permission for the redevelopment of the site for 49 dwellings with associated access, infrastructure, open space and landscaping (All matters reserved except means of access into the site).
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Decision

1. The application for a partial 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council applied for a partial award of costs in relation to four separate matters.
4. The appellant also made an application for a partial award of costs against the Council. That application is the subject of a separate decision. In responding to that application, the Council sought to introduce new grounds for seeking a partial award against the appellant. However, applications for costs should be made at the Hearing, as the Council's original application was. I do not consider that it is appropriate to introduce further grounds at such a late stage. I have not therefore commented on the additional grounds in this costs decision.

Alleged reversal of position on whether Oak 1 is a veteran tree

5. The question of whether Oak 1 is a veteran tree was controversial at the Hearing. The appellant argued that it is not, whereas the Council argued that it is. The Council complains that the appellant accepted that Oak 1 is a veteran tree in its statement of case, later changing tack and arguing that it is not.
6. Reason for refusal (1) refers to some trees having veteran tree status so there can have been no doubt that this would be a live issue in the appeal. The appellant's statement of case is dated 31 January 2025. At paragraph 3.70 it says:

"It is noted the LPA has specifically highlighted the removal of a 'veteran tree' on site which was not originally included on the tree survey and subsequent

plans. This was not originally included as the tree was felled prior to the submission of the application and what remains on site is a stump (as shown in the Officer Report)."

7. The appellant seeks to rely on the use of quotation marks around the word "veteran" to show that the appellant was not necessarily accepting the Council's position. However, the document must be read as a whole. Paragraph 3.71 refers to *"the removal of the veteran tree..."*, paragraph 3.72 acknowledges that there are implications for paragraph 193 of the National Planning Policy Framework which would flow from the tree being a veteran, and paragraph 3.76 states that *"owing to BNG regulations the baseline date for the calculation has to consider the site prior to the removal of the veteran tree."*
8. The nub of the appellant's case is set out at paragraph 3.73 which states that:

"It is considered in the first instance that paragraph 193 of the Framework does not apply in this case as it is clear the removal of the tree was done for external reasons unrelated to the development and its loss/deterioration is not "resulting" from the appeal development itself."
9. The statement of case does not expressly state that the appellant considered that Oak 1 was not a veteran tree. Reading the statement as a whole, it appears to me that the appellant accepted that the tree was a veteran but maintained that the felling was not related to the development so paragraph 193 of the Framework was not engaged.
10. This is consistent with the Biodiversity Net Gain Baseline Assessment (BNGBA), which states that the report considers the habitats on site when the Preliminary Ecological Assessment was undertaken in October 2023. The BNGBA includes two extra large trees, *"one of them being an ancient/veteran tree"*¹. The appellant suggests that the BNGBA was merely looking at a worst case scenario. However, my reading of the document is that the authors were describing the factual position on the ground as they understood it.
11. The Council only became aware that the point was in dispute when it received the Compensatory Strategy for the Replacement of Irreplaceable Habitat (trees) on or around 29 May 2025. This document was submitted, together with others, outside the appeal timetable, too late for it to be addressed in the Council's statement. In the interests of fairness, I allowed the Council to submit a Supplementary Statement of Case (SSoC) to respond to this and other matters.
12. The PPG gives examples of types of behaviour which may give rise to a procedural award against an appellant.² These include introducing fresh evidence at a late stage, necessitating preparatory work that would not otherwise have been undertaken, and prolonging the proceedings by introducing a new issue. In this case I consider that the appellant acted unreasonably by changing its position on the status of Oak 1 at a late stage. This caused the Council to incur unnecessary expense in that there was additional work in the preparation of its SSoC and additional time taken at the Hearing debating this matter³.

¹ Paragraph 2.2 of HD6

² PPG – Reference ID: 16-052-20140306

³ Inspector's note – The SSoC included a Rebuttal – Landscape and Trees which addressed the status of Oak 1. I estimate that about an hour and a half of hearing time was taken debating whether or not Oak 1 is a veteran tree.

13. The conditions for a partial award of costs have therefore been met. The terms of the award will reflect the fact that the Council's SSoC, and discussion at the Hearing, covered matters other than the status of Oak 1.

Late submission and withdrawal of Parameter Plan 919-02-20

14. The parameter plan was one of the documents submitted by the appellant on or around 29 May 2025. This was shortly before the Council's statement was due to be submitted. The Council sought advice from the Planning Inspectorate as to how, if at all, this document was to be treated. The Council was advised that the parameter plan was not considered to be an amendment to the appeal scheme because the appeal related to an outline application. However, it was additional information that had been submitted at a late stage. The Council was therefore given an opportunity to comment on the parameter plan in its SSoC.
15. The Council had various criticisms of the parameter plan which was said to be inconsistent with the updated indicative masterplan. The merits of those points were not tested because the parameter plan was withdrawn shortly before the Hearing opened.
16. The parameter plan was intended to contribute to discussions between the Council and the appellant on conditions. Such discussions are a normal part of preparing for hearings. I do not consider that the plan amounted to significant new evidence or to a material change in the appeal scheme. Even though the plan was withdrawn before the hearing, I do not consider that this amounted to unreasonable behaviour. It is not therefore necessary for me to comment further on whether the Council incurred unnecessary expense.

Gifting land to St Sebastian's Primary School

17. The appellant offered to gift land to the adjoining primary school through the S106 Agreement. A draft Agreement contained an obligation intended to result in the transfer of land to the school for a minimal consideration. The appellant's statement suggested that this would be a benefit to which moderate weight should be attached. The Council's statement made clear that, in the Council's view, this obligation would not be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
18. The appellant continued to ask the Council to engage with this matter until 15 June 2025, shortly before the Hearing. The reason given for withdrawing the obligation was that the school had not responded to consultation on the appeal. However, regardless of any discussions that there may have been with the school, there is nothing in the evidence before me to show that there was ever a reasonable basis for promoting this benefit as something that could properly be secured through a planning obligation. There was no evidence that such an obligation was necessary to make the proposal acceptable in planning terms. In my view it was unreasonable to ask the Council to continue to engage with the point once the Council's position had been set out in its statement of case.
19. That said, I do not consider that the Council incurred material wasted expense. Schedule 8 (as it then was) was not complex and, in any event, there is no evidence that the Council's legal team wasted any effort in engaging with the detail of the schedule. The Council's objection, which I agree with, was to the principle of the obligation.

Alleged failure to address reason for refusal No 3 (species of principal importance)

20. The Council's concerns related to effects on reptiles and bats. The appellant's position was that these matters could be addressed by planning conditions. No doubt there are sites and schemes where decision makers may properly conclude that such impacts could be addressed by conditions. For reasons set out in my appeal decision, I have found that this is not such a case. However, whilst I did not agree with the appellant's approach, I consider that they had an arguable case to make. I do not consider that there was unreasonable behaviour in relation to the substance of the appeal.
21. The Council had a further complaint in relation to a document entitled Strategy for Compensating Protected Species.⁴ This document purported to support the appellant's argument that these matters could be controlled by a condition. However, as noted in my appeal decision, this was a high level and generic document. It did not refer specifically to the appeal site, the species in question or any particular mitigation measures. Consequently, I attached little weight to it in my appeal decision. However, the document was so lacking in substance that, even if submitting it was unreasonable, it seems unlikely that the Council would have incurred material expense in dealing with it.

Conclusion

22. The conditions for an award of costs have been met in relation to the first of the four matters raised by the Council. They have not been met in relation to the other matters.

Costs Order

23. 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 Maverick Properties Ltd shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the contention that the tree known as Oak 1 at the Hearing was not a veteran tree, (excluding any costs incurred in providing evidence in relation to the consequences of Oak 1 being a veteran tree, for example in relation to buffer zones), such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to Maverick Properties Ltd, 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.

David Prentis

Inspector

⁴ HD9