
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 Maverick Properties Ltd for a partial award of costs against Wokingham Borough Council.
 - 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 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 appellant applied for a partial award of costs in relation to two separate matters.

Reason for refusal No 4 (trees)

4. The reason for refusal stated that the proposal had failed to demonstrate that 49 dwellings could be accommodated on the appeal site whilst protecting trees, including trees protected by a Tree Preservation Order or having veteran tree status. For reasons given in my appeal decision, I have agreed with this reason for refusal. It follows that the Council was able to substantiate the reason for refusal.
5. The appellant argues that the Council acted unreasonably by introducing a new line of argument in its statement of case relating to the concept of adjusting the buffer zone for Oak 1 to reflect the presence of Heathlands Road. The first point to note is that the officer's report made clear that one of the Council's concerns was that a buffer zone would be needed around the veteran tree. The concept of buffer zones in general could not have come as a surprise to the appellant, who was professionally advised on trees. Moreover, the formula for calculating such zones is well known to those who deal regularly with such matters. I do not think it was necessary for the Council to set out its own calculation of the buffer zone prior to its statement of case.

6. It must be kept in mind that the appellant's statement of case accepted that Oak 1 is a veteran tree. Whilst this point is not agreed by the appellant now, I have set out my reasons for this finding in my decision on the Council's application for costs. Having accepted that Oak 1 is a veteran tree, the appellant (acting reasonably) could have been expected to set out its assessment of the appropriate buffer zone in its statement of case. For whatever reason, it did not do so. The Council's assessment of the buffer zone was set out in its statement of case, which was an appropriate time to do so.
7. There was an inconsistency in the Council's statement of case on Landscape and Trees relating to the extent of the buffer zone. Plan 1 showed a radius of 54m, whereas the text at paragraph 9.47 indicates a radius of 37m. Plainly one of these dimensions must be wrong. Reading the statement as a whole, it is reasonable to infer that 37m is the correct figure because the basis for calculating it is set out at paragraphs 9.36 to 9.45. If the appellant had been in any doubt on this point they could have checked with the Council.
8. The Council later confirmed that Plan 1 was included in error, an error for which an apology was given. I have no reason to doubt that the inclusion of Plan 1 was simply a mistake. Mistakes can happen, even in carefully prepared professional evidence. Any suggestion that this was done deliberately to make difficulties for the appellant is unwarranted. I do not consider that this particular mistake amounted to unreasonable behaviour.
9. Even if the mistake was unreasonable, it did not result in wasted expenditure in the appeal process. The appellant's evidence on buffer zones was set out in documents HD14 to HD18. These documents were not predicated on a 54m radius, rather they set out the appellant's approach to calculating the buffer zone as an alternative to the Council's approach.
10. The appellant complains that the Council did not correct the error in its statement until 1 July 2025, which was after Hearing sessions dealing with trees. This was said to be irregular and prejudicial. However, this complaint does not take account of the particular way in which the evidence on trees was examined. If the Hearing had followed the timetable attached to my pre-hearing note, trees would have been discussed on the morning of Day 1. In the event that did not happen because, at the start of Day 1, the appellant sought to introduce a considerable amount of new evidence. This included HD14 to HD18, amongst other matters. To make best use of Hearing time, I decided that the Council and I should have the opportunity to consider the new documents during the adjournment at the end of Day 1.
11. When the Hearing resumed on Day 2, the Council indicated that it was content for HD8 to HD13 to be accepted as Hearing documents. However, I was concerned that HD14 to HD18 contained new technical material which the Council had not had an adequate opportunity to consider and respond to. To enable the rest of the evidence to be discussed, I suggested that HD14 to HD18 could be examined by way of a written procedure. The Council and the appellant agreed to this suggestion. At that stage it was anticipated that the rest of the evidence would be discussed on Day 2. Later that day it became apparent that a third day would be needed. Even so, the Council and the appellant stated that they still preferred to deal with the topic of buffer zones during the adjournment through the written procedure that had by now been put in place.

12. Matters relating to trees were discussed on Day 2. These included whether Oak 1 is a veteran tree, the reasons why it was felled, the proposed compensation strategy, the implications of building a footway and the effect of the proposal on trees other than Oak 1. The calculation of the buffer zone was not discussed on Day 2 because this was to be addressed through the written procedure. The Council's confirmation that the 54m dimension was included in error was set out in the Council's note "*Protection of newly cut ancient and veteran coppice stool*" which was duly submitted in accordance with that written procedure.
13. In summary, the appellant can have no complaint that buffer zones were examined through a written procedure during the adjournment between Day 2 and Day 3. First, because the need for the written procedure arose from the appellant's actions in submitting late evidence and, second, because the appellant agreed to the written procedure being used for the evidence on buffer zones.
14. Finally, the appellant argues that the buffer zone (of whatever size) could have been addressed at reserved matters stage and/or through the imposition of a planning condition. That is a matter that goes to the substance of the case. In my appeal decision, I have considered that argument and concluded that the appellant failed to demonstrate that the appeal scheme could be accommodated on this site in a satisfactory manner without harm to protected trees.
15. In relation to the first matter, I conclude that the conditions for a partial award of costs have not been met.

Reason for refusal No 3 (wildlife)

16. The first limb of the reason for refusal, which referred to Gorrick Plantation, was not pursued. The second limb stated that the appellant had failed to demonstrate that the development would not result in harm to species of principal importance, namely reptiles and bats. For reasons given in my appeal decision, I have agreed with this limb. It follows that the Council was able to substantiate the reason for refusal.
17. The appellant argues that the Council confirmed that it would not be defending reason for refusal No 4 in an email dated 13 May 2025, only to contradict itself by seeking to maintain the second limb of the reason in an email dated 19 May 2025. The Council seeks to argue that the email of 13 May 2025 did not withdraw the second limb.
18. The position is not entirely clear cut because the email of 13 May 2025 went on to recommend submission of a compensation strategy for species of principal importance together with mitigation measures for bats. However, the email started with an overview of various refusal reasons which were then under discussion including the following:

"RfR3 – I can confirm that this RfR is withdrawn"

19. In my view the appellant was entitled to rely on a plain reading of those words. It seems to me that the wording used was probably an error, in that the author intended to say that the first limb of RfR3 was withdrawn. Whilst not every error amounts to unreasonable behaviour, in my view this one did because it had a direct bearing on what the main issues in contention would be at the forthcoming Hearing.

20. That said, the appellant did not incur any unnecessary expense. The Council's true position was set out in the email of 19 May 2025. There is nothing before me to show that the appellant incurred material expense during this short period or as a result of the Council's error. The appellant's approach was that these matters could be satisfactorily addressed through conditions. The evidence on which that approach was founded was in documents that pre-date the Council's email of 13 May 2025.
21. The proposition that these matters could have been addressed through conditions goes to the substance of the case. My reasons for not following the appellant's approach are set out in my appeal decision.
22. In relation to the second matter, I conclude that the conditions for a partial award of costs have not been met.

David Prentis

Inspector