
Costs Decision

Site visit made on 9 September 2025

by **H Whitfield BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 October 2025

Costs application in relation to Appeal Ref: APP/K3605/W/25/3367992

Land north of Ramli, Beech Close, Cobham KT11 2EN

- 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 Mercatura Developments Ltd for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for the construction of a detached building of four apartments with associated access and landscaping.
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal. This application is made on substantive grounds.
3. The costs application is made on the basis that the Council has acted unreasonably in refusing planning permission. The applicant suggests that the Council (1) delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, namely the conclusions of a previous Inspector in a recent appeal¹ on the site, (2) has failed to produce evidence to substantiate the second part of its reason for refusal (relating to the development being contrived) based on its local plan policy and thus has made vague and generalised assertions about the proposal's impact which are unsupported by any objective analysis and (3) has failed to consider the benefits of the development in determining the application.
4. In relation to (1), the Council, or more specifically its Planning Committee, refused the planning application against the advice of its professional officers. Whilst a planning committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects.
5. The sole reason for refusal alleged that the proposal would be a cramped and contrived form of development that would harm the character and appearance of the area.

¹ Appeal Ref. APP/K3605/W/22/3310449 dated 4th December 2023

- However, for the reasons set out in my main decision, I have concluded that the development would preserve the areas character and appearance in accordance with the development plan. This is consistent with the conclusion drawn by a previous Inspector during a recent and similar appeal on the site, albeit for a larger scale of development.
6. Whilst there is an element of judgement involved, the Council has shown no justifiable basis for the stance taken by its Planning Committee in persisting with its objections to the development on grounds that the Inspector previously found to be acceptable. The reasons for departing from the previous Inspector's conclusions have not been substantiated and therefore the Council has acted unreasonably in maintaining this objection. This has resulted in the applicant having to lodge this appeal and prepare evidence and arguments to address those concerns, which would not otherwise have been necessary.
 7. In relation to (2), section 2 and paragraph 2.18 of the Council's Statement of Case (SOC) refers to a previously refused scheme having a *contrived* internal layout and matters relating to overlooking between internal facing windows. However, these do not feature on the appeal scheme, and the Council goes on to confirm that this current appeal scheme was considered to be unacceptable in design terms. No justification is given as to what the Planning Committee considered to make the development *contrived*, other than a brief reference at paragraph 2.14 of the Statement of Case which refers to the development appearing overly dominant and contrived when compared against other properties in the area due to the height of the development in a cramped plot. The Planning Committee minutes do not offer any further explanation either. I therefore consider that the Council has failed to produce evidence to substantiate this element of its reason for refusal on appeal and has relied on vague and generalised assertions about the proposal's impact which are unsupported by any objective analysis.
 8. In respect of (3), I note that the officers' report acknowledges the Council's shortfall in housing land, and the attendant presumption in favour of sustainable development in line with paragraph 11(d) of the National Planning Policy Framework. However, notwithstanding the Council's response on this point, there is limited evidence of any discussion of this point by the committee, or of their addressing the balance between any harm arising from the proposed development and the benefits that it would deliver.
 9. For the reasons given above, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 Elmbridge Borough Council shall pay to Mercatura Developments Ltd, 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.
11. The applicant is now invited to submit to Elmbridge Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Whitfield INSPECTOR