



Costs Decision

Site visit made on 16 September 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2025.

Costs application in relation to Appeal Ref: APP/F1610/W/25/3364914 Land South of Upton Lodge, Tetbury Upton, Gloucestershire GL8 8LP

- 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 Mr Gareth Phillips for an award of costs against Cotswold District Council.
 - The appeal was against the refusal of the Council to grant permission in principle for the Erection of a maximum of three residential dwellings.
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Decision

1. The application for an award of costs is allowed in part, 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. Paragraph 16-049-20140306 of the PPG states that examples of unreasonable behaviour can include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, making vague, generalised, or inaccurate assertions about a proposal's impact, and not determining similar cases in a consistent manner.
4. The appellant asserts the Council has displayed the unreasonable behaviours set out above. This includes through not applying the correct development plan and National Planning Policy Framework (2024) (the Framework) policies, not considering this permission in principle (PIP) application with regard to the advice in the relevant chapter of the PPG, there being an absence of analysis and substantiation in respect of heritage matters and the Cotswold National Landscape (CNL), and that it has not determined similar cases in a consistent manner.
5. The Council's view is the proposal does not meet the requirements of Policy DS3 of the Cotswold District Local Plan (2018) (the CDLP) because Tetbury Upton does not have reasonable access to the services available in Tetbury, and the examples of similar cases advanced by the appellant had at least some limited facilities. It explains how its housing land supply (HLS) situation has changed since application determination, and the heritage and CNL are matters for the Inspector to determine based upon its evidence. Therefore, it has not behaved unreasonably.

6. In terms of the allegation the Council has prevented or delayed development which should clearly be permitted having regard to the development plan and the Framework, based upon all the evidence before me, for reasons set out in my decision letter, this not proven. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is not demonstrated in this specific regard.
7. The Council's delegated report and appeal statement are brief and quite sparse in respect of substantive reasoning. In respect of policies for the location of development, its reason for refusal relied upon its assertion the proposal did not comply with CDLP Policy DS4 and it failed to meaningfully address the appellant's substantive case in respect of Policy DS3 and the Framework, which is unreasonable behaviour.
8. It was necessary for the appellant to adequately address the expectations of Policy DS3, and the Council did not dispute its change HLS position which is a matter that also required discussion. Therefore, I cannot conclude the appellant has incurred necessary or wasted expense in these regards. However, though the Council acknowledged the change in HLS position, it is not clear how this affected the weight to be attributed to certain policies, and the appellant has incurred unnecessary and wasted expense in having to address the Council's continued reliance upon Policy DS4 in asserting the location was unacceptable in principle.
9. On the evidence of the circumstances of 'similar' cases with respect to reasonable access to everyday services, facilities and employment opportunities, the appeal site appears to have comparable access and, in some cases, better access to a range of facilities. Therefore, it does appear the Council can be said to have not considered similar cases with a similar level of overall accessibility to services, in a consistent manner. It simply then failed to substantiate this, until a brief explanation in its costs application rebuttal, which is by no means comprehensive in-light of the policy tests. This is unreasonable behaviour and has resulted in the appellant incurring unnecessary and wasted expense through having to re-visit and address these matters further in the appeal process.
10. In respect of heritage matters, the Council's case is also brief and somewhat vague. The Council does not meaningfully engage with the appellant's significant body of evidence advanced at the appeal stage in this regard, which includes a detailed analysis and consideration in accordance with relevant policies and guidance upon such matters. However, I cannot agree the Council has ignored the scope of PIP applications. Though noting the advice in the PPG, there is a statutory duty to consider the effect of PIP applications under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The degree to which this matter is material will vary from case to case. In this instance the Council's approach was justified.
11. Despite the lack of further expert evidence, and quite brief case in this regard, much of the Council's overall conclusions on this matter were well-founded. Taking all the evidence into consideration, including that of interested parties, I have found the development harmful in this regard and the harm is not outweighed by the public benefits. It was necessary for the appellant to address heritage matters and it is not demonstrated that the appellant has incurred unnecessary or waste expense in this regard.

12. In terms of its consideration of the effect upon the CNL, at the application stage the Council was provided with a significant amount of evidence and analysis setting out the special qualities of the CNL and assessing the potential effects of the proposal against these. The Council's analysis fails to engage with much of the detailed evidence having regard relevant policies and guidance that should be used to inform its analysis, and to consider the effect of the proposal upon the CNL's particular special qualities.
13. The Council has set out little to evidence of how it has considered the scope for more sensitively designed scheme options. The Council also appears to automatically equate the adverse effects it sets out in respect of the general character and appearance of the area, to adverse effects upon the CNL without an adequate substantiation of its findings in relation to the attributes and special qualities of the CNL. Therefore, the appellant has incurred unnecessary and wasted expense in the appeal process responding to and addressing this matter.
14. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary and wasted expense in the appeal process has been demonstrated in part, and a partial award of costs is justified.

Costs Order

15. 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 Cotswold District Council shall pay to Mr Gareth Phillips, the costs of the appeal proceedings described in the heading of this decision limited to the costs incurred in addressing: the Council's reason for refusal on the grounds of conflict Policy DS4 of the CDLP; the Council's approach to similar planning applications in respect of accessibility in its approach to applying Policy CS3 of the CDLP; and, the Council's reason for refusal on the grounds the proposal would fail to conserve or enhance the CNL; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. Mr Gareth Phillips is now invited to submit to Cotswold District 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.

Mr D Szymanski

INSPECTOR