



Costs Decision

Site visit made on 26 August 2025

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2025

Costs application in relation to Appeal Ref: APP/C1570/W/25/3362146

Land West of High Street, Stebbing, Dunmow, Essex

- 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 Montare LLP for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for 'erection of 28 residential dwellings (comprising 14 affordable and 11 private market homes together with 3 self-build plots) and local affordable employment unit/flexible community space; provision of public open space and associated local amenity facilities (activating Local Green Space allocation); together with integrated landscaping and car parking (to include additional community parking facility)'.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples given in the PPG of behaviour that may give rise to a substantive award of costs include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and 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.
4. The decision of the Council's Planning Committee to refuse the planning application was contrary to the officer recommendation that permission should be granted. However, the Committee was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposal, albeit that there should be sufficient grounds to properly substantiate its decision.
5. The Council gave four reasons for refusing planning permission, although the fourth concerned the absence of planning obligations in respect of various matters and there was no dispute that this reason could be overcome on completion of a satisfactory legal agreement.

6. Of the other reasons, the first concerned the effect of the proposal on three designated heritage assets¹. In support of its case on this matter, the Council's appeal statement included additional commentary from Place Services.
7. The applicant is concerned that this comprised new information and that it necessitated a response as part of their final comments. However, it is an accepted and expected part of the process in an appeal proceeding by the part 2 written representations procedure such as this that parties can provide additional explanation in support of their case. The procedure also includes a specific opportunity for an appellant to provide 'final comments' in response to the Council's statement and any representations from interested people.
8. In this case, harm to the relevant heritage assets was identified within comments on the application made by the Conservation Officer and Historic England which also included some discussion of the significance of the assets. The officer report to committee also advised that there would be less than substantial harm to heritage assets, albeit with a recommendation that the harm would be outweighed by public benefits. The position that there would be less than substantial harm to heritage assets was therefore clearly before the Committee at the time of the decision. To my reading, Place Services' appeal stage comments provide additional detail discussing the significance of the heritage assets and the effects of the proposal on their significance; rather than representing any fundamental change in the position or case from that at the time of the Committee and set out in the reason for refusal. I am not therefore persuaded that the inclusion within the Council's appeal evidence of further detail on heritage matters amounts to unreasonable behaviour. Nor do I consider costs that the applicant may have incurred in responding to this evidence as part of the appeal to be unnecessary.
9. Moreover, I have not agreed with all aspects of the Council's case, but I have also identified harm to the significance of designated heritage assets and concluded in the case of the Conservation Area that the harm would not be outweighed by the benefits of the proposal. In my assessment, the Council's evidence appropriately and adequately substantiates its concerns in respect of effects on heritage assets. My conclusion that the harm to the scheduled monument and listed building would be outweighed by the public benefits of the proposal reflects a matter of planning judgement and I am satisfied that the Council did not behave unreasonably in reaching a different view.
10. The Council's second reason for refusal broadly concerned the location of the site within countryside and effects on the character and appearance of the area. The reason for refusal refers to saved Policy S7 of the Uttlesford Local Plan 2005 ('the LP') which is now some years old and which has been found in a review of the LP policies to be only partly consistent with the National Planning Policy Framework ('the Framework') given its more protective approach to countryside.
11. However, this fact is clearly recognised within the Council's appeal statement which does not specifically argue that it is the location in countryside alone which makes the proposal unacceptable such that this was a determinative factor.
12. Moreover, and contrary to the applicant's assertion that it afforded no weight, the council refers to the emerging Uttlesford Local Plan 2021-2041 ('the eLP') as

¹ A scheduled monument (The Mount: a motte castle in Stebbing Park); a listed building (Stebbing Park) and the Stebbing Conservation Area

- attracting limited weight. It is not therefore apparent that it has wholly disregarded the eLP as a material consideration. The applicant may consider that greater weight should be attached to the eLP, but that is a matter of planning judgement and the Council has explained its view with reference to the stage reached noting that there had been no outcome of the Hearing to date.
13. In any event, the Council may not specifically discuss the designation of Stebbing as a 'larger village' in the eLP, but the evidence before me does not indicate that the eLP would alter the development limits of the village such that the site would no longer be in countryside.
 14. Irrespective of any disagreement over the degree of weight afforded to the eLP, I am not persuaded taking these factors together that the Council has afforded undue weight to conflict with saved Policy S7 purely on account of the fact that the site is positioned in the countryside. Rather, its evidence focuses on harm that would be caused to the countryside and landscape and visual effects of the proposal. As I have noted in my appeal decision, the provision within saved Policy S7 seeking development that protects or enhances the particular character of the part of the countryside within which it is set would be broadly consistent with objectives in the Framework. I therefore agree with the Council that conflict with this aspect of saved Policy S7 would attract significant weight.
 15. On that basis, I do not consider the Council's second reason for refusal was unreasonable or unwarranted, and I find that it has properly substantiated its concerns.
 16. The Council's third reason for refusal relates to the effect of the proposal on Local Green Space ('LGS'), with both parcels of the appeal site being designated as LGS in the Stebbing Neighbourhood Plan 2022 ('the NP'). The applicant highlights that the proposal would provide a considerable increase in the area of publicly accessible land on the site and that it includes measures to 'activate' the space for public benefit. As I have noted in my appeal decision however, I have not been directed to any policy or guidance indicating that public access or recreation is a primary or overriding purpose of LGS and I have found in the circumstances that the proposal would have an overall adverse effect on the qualities of LGS. Notwithstanding the provision for public open space, it was not therefore irrational for the Council to find harm to LGS.
 17. The applicant has also argued that the NP does not contain policies and allocations to meet its identified housing requirement. However, this is with reference to the housing requirement in the eLP. This is much greater than the level of housing allocated in the current NP, but the eLP is not yet part of the adopted development plan, and despite its advanced stage, there is no certainty that it will be adopted unchanged. Even if the eLP is adopted, this would not in itself alter the fact that the appeal site is currently designated as LGS in a NP which also forms part of the adopted development plan. Consequently, it would still be necessary to consider the proposal having regard to local and national policies concerning LGS.
 18. Having regard to these policies, the Council determined that harm to LGS would not be outweighed. The applicant has a different view, but the balance of competing factors is a matter of planning judgement. Even specifically noting the eLP context and its housing requirement for Stebbing and the benefits of the

proposal including the provision of housing and affordable housing, I have also found that harm to LGS would not be outweighed.

19. Accordingly, while the Council has not specifically discussed the eLP requirement for housing in Stebbing, I do not find that it behaved unreasonably in finding unacceptable harm to LGS overall.
20. Furthermore, the matter of whether the NP contains policies and allocations to meet its identified housing requirement may be relevant to how the presumption in favour of sustainable development would apply in accordance with paragraph 14 of the Framework. However, the harm to designated heritage assets provides a strong reason for refusing the development proposed such that the presumption in favour of sustainable development outlined at paragraph 11 d) of the Framework would not indicate that permission should be granted in any case. Even if I were to find that the Council had behaved unreasonably in how it had considered the eLP context in making its decision, I do not therefore consider that the appeal could have been avoided.
21. Taking these matters together, I am satisfied that the Council's evidence sufficiently and reasonably justifies its refusal of the planning application and I do not consider that this is a case where there has been unreasonable delay to a development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
22. Turning to the Council's fourth reason for refusal, I understand that the applicant was prepared to provide the obligations sought by the Council, but there was no legal agreement in place at the time the planning application was determined.
23. A legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) ('the Act') was then progressed as part of the appeal process. In terms of the form of this agreement, the Council has not disputed the applicant's evidence that it had advised prior to submission of the appeal that the legal agreement could be executed as a Unilateral Undertaking, before it later changed its position to require a bilateral agreement. Nor has it given any explanation for the change.
24. Given the Council's initial advice, the applicant submitted a draft Unilateral Undertaking as part of the appeal. Although they highlight the additional cost and complexity involved, the applicant has provided no compelling evidence that the Council's ultimate requirement for a bilateral agreement was in itself excessive or unreasonable. Insofar as the applicant would have incurred costs associated with preparation of the agreement as part of the application process had the Council resolved to grant planning permission, I am further not persuaded that expense associated with the provision of the bilateral legal agreement would be unnecessary in principle.
25. However, while there may be significant areas of similarity in their drafting, work on elements specific to the Unilateral Undertaking which are not part of the completed bilateral agreement would not have been necessary had the Council properly advised of its position from the start of the process. In my view, the Council's initial advice to the applicant was unreasonable, and would have caused the applicant to incur at least some unnecessary and wasted expense associated with work on aspects of the Unilateral Undertaking that would not have been required had the agreement been prepared as a bilateral from the start.

26. In addition, the applicant notes that it was agreed with Council Officers and the Planning Inspectorate prior to submission of the appeal that a Statement of Common/Uncommon Ground ('SoC/UG') between the parties would be a helpful way to narrow issues in this case. A SoC/UG signed by the parties was subsequently provided with the appeal submission. In its appeal statement however, the Council invited me to dismiss the SoC/UG, advising that the Council do not consider that they are bound to a Statement of Common Ground for an appeal made under written representations.
27. A SoC/UG is not a requirement for appeals proceeding by written representations and the Council was therefore under no procedural obligation to participate. Nevertheless, it did engage with the applicant to agree the SoC/UG in this case. Having done so, I can appreciate the applicant's surprise and disappointment when the Council later sought to renege on what had been agreed.
28. The Council does not suggest that it gave any indication during preparation of the SoC/UG that it considered the work to be redundant to or outside of the appeal process. On that basis and given that submission had been agreed with the Planning Inspectorate in this case, I consider that the applicant would well have progressed the SoC/UG in good faith as an element of the appeal in this case.
29. The Council has offered no cogent reason to explain why it progressed and ultimately agreed a SoC/UG that it would later seek to depart from. In my judgement, it behaved unreasonably in allowing the applicant to spend time and effort on progressing a SoC/UG to form part of the appeal which the Council would later go back on, rendering the expense that the applicant would have incurred in progressing the SoC/UG as unnecessary and wasted. The Council may also have invested resources in agreeing the SoC/UG, but that does not persuade me that the applicant was not put to unnecessary and wasted expense.

Conclusion

30. For these reasons, I find that the Council's refusal of the application was not unreasonable overall and a full award of costs is not justified. However, I have identified two specific aspects where unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Accordingly, a partial award of costs is justified.

Costs Order

31. 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 Uttlesford District Council shall pay to Montare LLP the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in:
 - abortive work on progressing aspects of the Unilateral Undertaking submitted with the appeal that were superfluous or not necessary to the eventual bilateral agreement completed under section 106 of the Act, and
 - preparing and agreeing the Statement of Common/Uncommon Ground.such costs to be assessed in the Senior Courts Costs Office if not agreed.

32. The applicant is now invited to submit to Uttlesford 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.

J Bowyer

INSPECTOR