



Costs Decision

Site visit made on 28 October 2025

by D Wildsmith BSc MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2025

Costs application in relation to Appeal Ref: APP/Y3940/W/25/3367117 Land off Braydon Lane, Chelworth Industrial Estate, Chelworth, Cricklade, Wiltshire, SN6 6HQ

- 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 Bel Ombre Properties Limited for a full or partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of outline planning permission for industrial/warehouse development within Class E(g) (Office, Research & Development and Light Industry), Class B2 (General Industry) and Class B8 (Storage & Distribution).
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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. There are several strands to the appellant's costs application. It firstly argues that the Council took an unreasonably long time to determine this application, and on this point I realise that there is a difference of opinion between the parties as to what should be the date on the Decision Notice. The Decision Notice I have seen is dated 24 January 2025, which is the date the decision was uploaded to the Council's website. However, due to issues with the Council's computer software, the applicant was not notified of this decision until 25 February 2025. The appellant maintains that this delay cut a month off the time available to consider and prepare an appeal and pressed the Council to amend the Decision Notice to show this later date, but this has not been done.
4. But regardless of which date is settled upon, the Council took either 150 weeks or 155 weeks to determine this application, which the appellant argues amounts to an unreasonable delay, given that the Council was aware of the significant undersupply of employment land within the M4 corridor. The planning application was dated 1 March 2022 and I note that some delay was caused by the Council seeking further information. The appellant acknowledges that this element of delay was helpful to both parties as it allowed some potential reasons for refusal to be overcome. However, information set out in the Council's Officer Report (OR) indicates that the last document submitted was an Archaeological Evaluation on 4 July 2023. No explanation has been given as to why the application was not determined until 24 January 2025, some 80 weeks later, and this delay does, indeed, seem unreasonable.

5. However, no evidence has been submitted to indicate that the appellant was pressing for a decision during this period, and there is nothing to suggest that this delay resulted in the appellant incurring any unnecessary expense. As the Council subsequently refused to grant planning permission, and as I have endorsed that decision through this appeal, it cannot be said that the delay prevented development which should clearly have been permitted, as set out in the first bullet-point of paragraph 49 of the PPG.
6. Then the appellant repeats its assertion that there is a significant undersupply of employment land in the M4 corridor, and that as a result paragraph 11(d) of the National Planning Policy Framework ('the NPPF') is engaged, meaning that the policies which are most important for determining the application are out-of-date and that the so-called 'tilted balance' should be applied. The appellant argues that the Council failed to carry out this exercise, amounting to a failure to take account of national policy and all material considerations. Again the appellant maintains that this amounts to unreasonable behaviour in the context of the first bullet-point of the PPG's paragraph 49. However, this costs application is the first time that the appellant has contended that NPPF paragraph 11(d) should apply in this case, not previously having made any reference to it in its review of relevant NPPF paragraphs in its Statement of Case (SoC).
7. Moreover, whilst I acknowledge that the Wiltshire Core Strategy (CS) was adopted back in 2015, there is no suggestion in either the appellant's SoC or the Council's OR that the policies which are most important for determining this appeal are out-of-date, and no firm evidence has been submitted to demonstrate that this is the case. Because of this I made it clear in my appeal decision that I do not consider NPPF paragraph 11(d) applies in this case, and no tilted balance is therefore invoked or necessary. That said, I do share the appellant's view that the support given to this proposal from the Council's Economic Development Officer (EDO) should have been reported in the OR, but taken together with the other economic information in the OR I am not persuaded that the EDO's comments, which make no reference to relevant CS or Cricklade Neighbourhood Plan (NP) policies, would have caused the Council to reach a different view on this issue. As such, the Council's actions on this matter cannot be seen as unreasonable.
8. The next strand of the appellant's claim is that the Council's Senior Landscape Officer (SLO) relied on adopted documents which are more than 20 years out of date when providing comments on this planning application. The appellant points out that there has been considerable development around the appeal site in the last 20 years or so, and demonstrated this by submitting 2 aerial photographs of the Chelworth Commercial Area and surrounding area, from 2002 and 2024. The appellant maintains that to make any assessment of the landscape impact of the proposed development on the basis of documents which are hopelessly out of date in the context of the immediate area is wholly unreasonable behaviour. In this regard the appellant cites bullet-point 2 of PPG paragraph 49 (a failure to produce evidence to substantiate each reason for refusal on appeal); and bullet-point 3 (vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis).
9. However, whilst development has clearly taken place at the Chelworth Commercial Area over this 22 year period, it all seems to me to have been within the area defined in Figure 14 of the NP. No further information has been provided regarding what the appellant describes as '*an intensification of employment development on the south side of Malmesbury Road, to the north-west of the appeal site*', so I am unable to form a view on this area. I acknowledge that a solar farm now exists on fields to the west of the

appeal site, but as noted in my appeal decision this is a low-level development, not seen to any material extent from either the adjacent bridleway or Braydon Lane.

10. But regardless of the matters set out above, I consider that although the SLO did indeed refer to Landscape Character Assessments which date back to 2004 and 2005, his advice was not solely based on these Assessments, with much of his consultation response making reference to policies from the CS and the NP, as well as his own professional views. For these reasons I do not consider that the Council acted unreasonably in having regard to the advice from its SLO.
11. The appellant also maintains that the Council acted unreasonably with regards to its third reason for refusal, which alleged that the development would result in a potentially significant increase in vehicle movements that would be inappropriate within the rural setting, with the increase in movements being harmful to the character and amenities of the town of Cricklade. However, it is clear to me that the advice the Council received from its Highways Officer (the Major Projects Officer (MPO) in the Sustainable Transport Team) concentrated on such matters as the capacity of nearby junctions, traffic routing, junction design and visibility considerations, and sustainable transport. On all of these matters the MPO's advice was that the development was either acceptable, or could be made acceptable through the imposition of planning conditions.
12. As far as I can see from the OR, the Council accepted this advice and did not refuse planning permission on any of the technical matters just described. It did, however, have regard to the detailed representations from Cricklade Town Council and local residents who objected to the appeal proposal on the grounds of the impact of increasing traffic levels on matters such as the health and well-being of local residents, the impact on the Cricklade Conservation Area, and the 'environmental capacity' of roads within Cricklade. In addition, the OR specifically mentions CS Policy 19 and the fact that one of the issues it seeks to address is *'local concerns regarding the impacts of HGV traffic on the local road network'*.
13. Whilst many of the points just mentioned involve subjective assessments, the objections were coherently made and although I have reached a different conclusion to the Council on this matter, I consider it quite legitimate for the Council to have had regard to these matters in deciding to frame its third reason for refusal. In doing so I do not consider that it acted unreasonably, and I therefore do not share the appellant's view that the Council acted as described in bullet-points 2 and 3 of PPG paragraph 49.
14. The final strand of the appellant's claim relates to the flood risk matters set out in the Council's fourth reason for refusal. In terms of chronology, and notwithstanding the points detailed in paragraph 3, above, the Council issued its Decision Notice on 24 January 2025, based on the flood risk information available to it at that time – namely the appellant's January 2022 Flood Risk Assessment & Drainage Strategy, together with the comments from the Council's Drainage Officer (DO). The December 2024 update to the NPPF amended the requirement for the sequential approach described in paragraph 173 to apply to *'any form of flooding'*, and then in March 2025 the Environment Agency (EA) issued updated flood mapping data. The appellant took these 2 new pieces of information on board, and commissioned an updated Flood Risk and Drainage Statement (FRDS) in May 2025. The appellant then lodged its appeal on 5 June 2025, submitting its SoC and its Costs Application, both dated 4 June 2025.
15. In its Costs Application the appellant invited the Council to drop its opposition to the scheme on flood risk grounds and suggest suitable conditions in light of the recently

submitted FRDS, arguing that if the Council refused to do so this would amount to unreasonable behaviour as described in bullet-points 1 and 4 of paragraph 49 of the PPG. Bullet-point 1 has already been detailed, earlier, but bullet-point 4 is where planning permission is refused *‘on a planning ground capable of being dealt with by conditions’*, where it is concluded that *‘suitable conditions would enable the proposed development to go ahead’*.

16. The Council did not drop its opposition on flood risk grounds, and expressed the view in its SoC that the appeal should be determined against the information submitted with the original application. It further maintained that the indicative site plan and information as submitted and consulted on fail to demonstrate that a sequential approach to direct new development to areas with the lowest risk of flooding from any source has taken place.
17. I share the appellant's view that the Council's insistence that the appeal be decided upon the originally submitted information was unreasonable. Clearly, matters had moved on since the planning application was originally submitted and it would not have been correct to disregard the changes to national guidance in the NPPF or the updated EA flood mapping. In this context it is also unreasonable that the Council did not re-consult with its DO, or with the EA – although this is consistent with the Council's view that the appeal should be decided on the basis of the originally submitted information.
18. However, at the time the Council submitted its SoC¹, it was correct in maintaining an objection on flood risk grounds. This is because the sequential test had not been fully complied with as there is no evidence to show that the appellant had explored whether or not there were reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, as required by paragraph 174 of the 2024 version of the NPPF. The exception detailed in NPPF paragraph 175 did not apply to the proposed development at that time, because the relevant PPG guidance (paragraph 23), made it clear that *‘even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied’*. This requirement was not removed from this paragraph until 17 September 2025. Its removal was the reason I was able to conclude, in my appeal decision, that the proposed development would not be at an unacceptable risk of flooding and that the correct approach to the sequential test had been followed.
19. Summarising the above points, I consider that the Council did act unreasonably in the length of time it took to determine this planning application, and in relation to some aspects of its fourth reason for refusal, as detailed above. However, there is no evidence to indicate that these actions resulted in any wasted expense as I have concluded, on balance, that the proposed development is not acceptable, and the work undertaken by the appellant to update its FRDS was important and necessary.
20. My overall conclusion, therefore, is that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

D Wildsmith

INSPECTOR

¹ Undated, but clearly submitted prior to 17 July 2025 as that is the date on the appellant's response