



Costs Decision

Inquiry opened on 14 October 2025

Site visit made on 22 October 2025

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2025

Costs application in relation to Appeal Ref: APP/N1920/W/25/3365681 Land at and to the west of Longview 49 London Road, Shenley, Hertfordshire WD7 9BN

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Beechcroft Developments Ltd and Mr and Mrs Prince for a full award of costs against Hertsmere Borough Council.
 - The Inquiry was in connection with an appeal against the refusal of an application for planning permission for *demolition of "Longview" and associated outbuildings, alterations to No.49 London Road along with the erection of replacement garage following demolition of the existing garage to allow for the construction of up to 103 retirement homes (Use Class C3), an integrated community facility, vehicular and pedestrian access, internal roads, landscaping, drainage, and other associated works and infrastructure (hybrid application with full details of works at No.49 London Road with the remainder being outline with all matters of detail reserved except for access).*
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Planning Practice Guidance (the Guidance) 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 Guidance explains that costs may be awarded on either procedural or substantive grounds. This application is for a full award on substantive grounds. The Guidance gives examples of types of behaviour by a local planning authority that may give rise to a substantive award but the list of such examples is not exhaustive.

Background to the Inquiry

4. The Inquiry was in connection with a refusal of planning permission issued by the Council on 19 November 2024. There were five reasons for refusal. At the Case Management Conference (CMC) held on 21 July 2025 the Council indicated that it would not be defending reason for refusal (1) relating to Green Belt. This was because the Council's decision pre-dated changes to the National Planning Policy Framework (the Framework) made in December 2024. There was no suggestion that the Council acted unreasonably in reviewing its case in the light of changes to national policy.

5. At the CMC, the parties advised that discussions were continuing in relation to biodiversity and drainage/flood risk. The Council and the appellants subsequently prepared statements of common ground (SoCG) relating to ecology and drainage/flood risk. The Council's concerns in relation to these matters were resolved, such that reasons for refusal (2), relating to protected species and habitats, and (4), relating to drainage/flood risk, were not pursued. Again, there was no suggestion that the Council acted unreasonably in reviewing its case in the light of further information. Reason for refusal (2) also refers to the loss of a horse chestnut tree, a matter which is discussed further below.
6. Reasons (1), (2) and (4) were not pursued by the Council, so their merits were not tested at the Inquiry. However, there is nothing before me which suggests that any of them could not have been substantiated, as matters stood at the time of the Council's decision.
7. Reason (3) related to landscape character. In my appeal decision, I have attached significant weight to the landscape and visual harm that would result from the proposal. Notwithstanding my overall conclusions on the planning balance, this reason for refusal was substantiated at the Inquiry.
8. Reason (5) related to design and the effect on rural character. At the time of the Council's decision, the original parameter plans, which were detailed, closely followed the illustrative scheme. I have found in my appeal decision that, if planning permission had been granted on the basis of those parameter plans, the resulting development would have been very like the illustrative scheme. For reasons given in my appeal decision, I have concluded that such a scheme would fail to relate positively to its surroundings and would be harmful to the rural character of Shenley. It would not represent good design in the terms of the Framework. It follows that, as matters stood at the time of the Council's decision, this reason for refusal would have been substantiated.
9. Drawing all this together, it seems to me that all of the reasons for refusal were soundly based at the time. The appellants' complaints relate to matters contained in the proof of evidence of Emily Stafford (the PoE) and to things said by Ms Stafford (ES) in oral evidence. None of those complaints go to the soundness of the original reasons for refusal. It is therefore hard to see how a full award of costs on substantive grounds could be justified. Nevertheless, I shall go on to consider the specific matters set out in the application to see if there was unreasonable behaviour (either procedural or substantive) during the appeal process.

Approach to the planning balance

10. It was common ground that this was a case where the approach set out in paragraph 11(d)(ii) of the Framework was engaged.
11. The key part of the PoE is section 5, which dealt with the planning balance. There is an inconsistency within that section, in that paragraph 5.1 included the following:

"However, where the most important policies for determining the application are out of date, permission should be granted unless the benefits are significantly and demonstrably outweighed by the adverse effects."
12. This contrasts with the paragraph 5.5 which stated:

“It is my professional opinion that the permanent and harmful impact on the landscape character and the conflict with the character and appearance of the local area, as well as poor design approach, would not be outweighed by the proposed benefits of the scheme.”

13. Looked at in isolation, paragraph 5.5 appears to have got the test the wrong way round. Moreover, it does not include any reference to “*significantly and demonstrably*.” This raises a question as to whether the correct test was in fact applied. However, to my mind the PoE should be read as a whole. The correct test was set out in full in paragraph 3.24 and was correctly referred to in paragraphs 3.26 and 4.11. There were further references to the test in section 6 but, as these merely summarised what had gone before, they do not alter my conclusion on this point. I consider that paragraph 5.5 was poorly worded. However, reading the proof as a whole indicates to me that the correct test was applied.
14. I have also had regard to the oral evidence. At the Inquiry, ES accepted that if an appeal decision were to use the wording that had been used in paragraph 5.5 of the PoE, that would be an obvious error. However, in response to a question from Mr Simons (on behalf of the appellants), ES maintained that the correct test had been applied, notwithstanding any error in the wording used in part of the PoE. To my mind that was a clear answer to a direct question, given by a witness who was aware of her professional duty to the Inquiry. I accept that answer.
15. I conclude that it has not been demonstrated that the Council acted unreasonably in relation to the approach taken to the planning balance.

Golden Rules

16. The appellants argued that the PoE gave no weight to the scheme’s compliance with the Golden Rules. This was said to be a failure to apply national policy set out in paragraph 158 of the Framework.
17. The PoE did not discuss whether the scheme would comply with the Golden Rules. However, it did not need to because it was agreed in the SoCG that the appeal scheme would comply with the Golden Rules¹. It was also agreed in the SoCG that significant weight should be given to compliance with the Golden Rules, in accordance with paragraph 158.² At the Inquiry, ES departed from that position, although she was not able to say what weight ought to be attributed to compliance with the Golden Rules.
18. Later in the Inquiry, I asked a question about how paragraph 158 should be applied in circumstances where a decision maker was minded to attach significant weight (or more) to one (or more) of the components of paragraph 156. I asked about the potential for double-counting.³ However, my question (and the answers I was given) are not relevant to this part of the application for costs because the appellants’ complaint relates to the PoE and to answers given by ES at an earlier stage of the Inquiry.
19. The PoE did not address the question of the weight to be attached to compliance with the Golden Rules. Moreover, during cross-examination, ES departed from

¹ Paragraph 8.26(d) - Planning SoCG

² Paragraph 8.27 – Planning SoCG

³ Inspector’s note - My question was addressed to Mr Simons and Mr Sheikh during closing submissions. It was put as a question of general approach, rather than a question relating to the merits of this appeal.

what had been agreed in the SoCG. In my view, departing from something that had previously been agreed, without any justification or explanation, amounted to unreasonable behaviour in relation to inquiry procedure. As pointed out in the Council's response to the application for costs, there is no guidance or judicial authority as to how the weight to be attached to compliance with the Golden Rules should be factored in to a planning balance. The difficulty here is that the Council's evidence did not address the matter at all.

20. That said, I do not consider that the appellant was put to unnecessary expense in the appeal process. Questions were asked and submissions made on the documents already before the Inquiry. No additional evidence had to be prepared. Only a limited amount of inquiry time was spent on this point. If ES had addressed the point in the PoE, it is likely that questions would have been asked about that too. That would also have taken some inquiry time.
21. There is no way of knowing how, if at all, the overall planning balance might have been affected if this matter had been referred to in the PoE. However, given the Council's position on landscape impact and design, it seems to me unlikely that the overall planning balance would have arrived at a different conclusion.

Age-restricted housing or accommodation for retirement living

22. The Council and the appellant disagreed over whether the appeal scheme would be age-restricted housing or accommodation for retirement living. However, this disagreement had no bearing on whether the Council's reasons for refusal were substantiated. Rather, it went to the weight to be attached to one of the benefits, namely the provision of housing for older people.
23. It was common ground that, having regard to the Guidance, the main feature distinguishing age-restricted housing from accommodation for retirement living is that the latter would provide some support to enable residents to live independently. The appellants contended that the officer's report and the PoE were mistaken in assuming that there would be no staff on site. The PoE refers to the officer's report, which states that "*the proposal would include no warden or site manager.*" At the Inquiry, in answer to questions from Mr Simons, ES explained that both the officer's report and the PoE were drawing a distinction between the role of a warden or site manager and the role of an estate manager. ES fairly accepted that this could have been expressed more clearly. However, the proposed estate management service was referred to in the Planning Statement submitted with the application, so planning officers would have been aware of the appellants' intention when assessing the application.
24. Rather than there being a factual error, as the appellants suggest, I consider that the nub of the dispute was whether the proposal would provide support of a kind that would meet the definition of retirement living set out in the Guidance.
25. The appellants rely on the Housing SoCG which refers to the development providing "*support services.*"⁴ However, the SoCG should be read as a whole. Under the heading "*matters in dispute,*" it states that the Council disagreed with the appellants about the nature of the scheme and considered that it should be regarded as age-restricted housing, rather than as accommodation for retirement

⁴ Paragraph 2.25 – Housing SoCG

living. All parties were aware of the definitions in the Guidance so such a disagreement could only have been about the nature and extent of any support.

26. The appellants also rely on a letter from Hertfordshire and West Essex NHS Trust.⁵ Whilst I have taken that letter into account as part of my overall assessment, I do not think it is particularly significant in terms of the point at issue here. The focus of the letter was the justification for a healthcare contribution. There is no evidence that the Trust considered the issue of whether this scheme should properly be regarded as accommodation for retirement living or age-restricted housing for planning purposes. Both terms are used in the letter.
27. At the Inquiry, ES was criticised for using the term “*meaningful support*.” However, in my view little turns on whether that term is used or not. The point at issue between the Council and the appellant was essentially a matter of fact and degree regarding the nature and extent of support. This required the exercise of planning judgement. In my appeal decision, I have set out my approach of looking at the scheme in the round. I have concluded that the scheme would meet the Guidance definition of retirement housing. However, I consider that the Council had an arguable point to make. The Council’s approach to the provision of housing for older people did not amount to unreasonable behaviour.

The horse chestnut tree

28. The original application documents included an arboricultural report by Ruskins Tree Consultancy (Ruskins) which identified the tree in question as T182, a horse chestnut, which it assessed as being category A in the BS5837 grading system. Ruskins later changed their assessment to category B but the Council was not satisfied that this change had been justified. At the Inquiry, the appellant called a different arboricultural consultant, Julian Forbes-Laird (JFL) of the Forbes-Laird Arboricultural Consultancy. The Council maintained that the tree should be regarded as category A tree. The Council’s evidence was included in the PoE produced by ES and in a planning note, also produced by ES.⁶
29. JFL argued that the original assessment by Ruskins must have been made in error because their surveyor found that the tree had an expected future longevity of below 40 years. Whilst that may be so, the Ruskins surveyor must have considered that the tree met the qualitative criteria for category A. This may have been because they thought it was a particularly good example of its species or because they thought it was an essential component of a group. JFL took a different view, which he was fully entitled to do.
30. The future longevity of a tree, and whether it meets the qualitative criteria set out in BS5837, are matters that require the exercise of professional judgement. They are matters on which qualified professionals may legitimately reach different conclusions. It is therefore hard to see how unreasonable behaviour in relation to the substance of the case can have arisen. In maintaining its view on the categorisation of the horse chestnut, the Council’s judgement was aligned with the original assessment by Ruskins.
31. The Council did not call an arboricultural expert at the Inquiry. However, planning witnesses often include in their evidence technical matters on which they have

⁵ ID11

⁶ ID3

received advice from others who have the relevant expertise. In this case, I have no reason to doubt that the Council's arboricultural consultant reviewed the appellants' arboricultural evidence.

32. The appellants argued that, in believing that trees covered by a tree preservation order will necessarily fall within category A, ES misunderstood BS5837. Whilst that may be the case, it does not alter my view that the Council had a reasonable case that this tree, on its merits, was worthy of being placed in category A. The Council did not act unreasonably in relation to arboricultural matters.

Conclusion

33. For the reasons given above, I conclude that the conditions for an award of costs have not been met.

David Prentis

Inspector