Planning Inspectorate

Costs Decision

Site visit made on 17 November 2025

by C Housden BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Costs application in relation to Appeal Ref: APP/C3620/W/25/3366290
Happy Paddocks Farm, Stan Hill, Charlwood, Surrey RH6 0ES

- 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 Jim for a full award of costs against Mole Valley District Council.
- The appeal was against the refusal of the demolition of an existing detached house and erection of a replacement 3 bedroom detached house, together with the change of use of agricultural land to facilitate the repositioning of the house and to provide residential curtilage and parking area.

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. The submission made by the applicant relates to their view that the Council has erred in its approach to the fallback position in both planning terms and legal precedents. As a result, the Council has incorrectly assessed the impact on the Green Belt leading to unnecessary costs in the applicant contesting the appeal.

4. Firstly, I do not agree with the applicant's case that the fallback position should be applied to paragraph 154d) of the National Planning Policy Framework (the Framework). The Framework is clear that this exception relates to a building which is being replaced. The fallback position has not been built and therefore it is not being replaced. The Council applying paragraph 154d) to the dwelling as it currently exists was a reasonable position to take and not an incorrect application of policy.

5. The parties agree on the relevant case law relating to fallback positions[1], which I have considered in my Decision Letter. These cases relate to whether a fallback position amounts to a material consideration. This is a matter different to the question of how much weight should be applied to a material consideration, which is a matter of planning judgement.

6. In its officer report, whilst not directly referring to the case law by name, the Council grapples with the principles of these legal cases, specifically stating that 'in order to

[1] - Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314 and;
- Zurich Assurance Ltd (t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708.

be attached weight as a fall-back position, the Prior Approval should have a 'realistic prospect of being implemented''[2]. Due to the fallback scheme not having a residential curtilage or on-site parking, and given these elements were proposed through the appeal scheme, the Council did 'not consider that the fallback position has a realistic prospect of being implemented in this case'[3]. This conclusion, echoing the principles of established case law and framed in the context of the officer report questioning whether weight can be attached to the fallback position confirms, that on a fair reading, the Council did not consider the fallback position to be material in its refusal of the planning application. The fallback position is not referred to in any subsequent sections of the officer report.

7. However, at the appeal stage the Council sets out that the fallback scheme was material in its decision. But, given that the Council considered 'there was no realistic prospect of the fallback being implemented' and it 'believes the owner will not take advantage of the permitted development rights' the Council gave 'limited weight' to the fallback position in its statement of case[4].

8. Whilst I accept that the likelihood of a fallback position being implemented may affect the weight attributed to a material consideration, weight is a different concept compared to whether a consideration is material or not which is what these legal cases relate to[5]. The Council's statement of case is therefore not consistent with its officer report and conflates case law principles relating to a matter of law with a matter of planning judgement.

9. As such, in order to establish whether the Council has acted unreasonably, it must be determined whether they have acted contrary to the established case law. In this regard the case law[6] sets out 'the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fallback position happening is very slight indeed, or merely an outside chance, that is sufficient to make the position a material consideration'.

10. This is a low bar, and the Council's reasoning in its evidence fails to adequately substantiate that the lack of a parking area and curtilage would mean the chance of the applicant implementing the fallback position was below the bar of 'very slight indeed', or, 'merely an outside chance'. As such, the Council has not followed well-established case law in refusing the planning application to which the PPG identifies amounts to unreasonable behaviour. However, for costs to be awarded, the unreasonable behaviour must have led to unnecessary or wasted expense.

11. The Council also provides an assessment in its statement of case relating to the effect of the fallback position on the Green Belt compared to the appeal scheme. In this assessment the Council identifies the appeal scheme 'would have a significantly greater impact on the Green Belt than the fallback scheme'[7]. It follows that even if the Council had duly considered the fallback development at the application stage, it still would have found the appeal scheme to be inappropriate Green Belt development and refused the application on the basis of a lack of very special circumstances to clearly outweigh the harms it identified. Therefore, in

[2] Paragraph 9.3.6 of the Officer Report
[3] Paragraph 9.3.6 of the Officer Report
[4] Paragraph 5.6 of the Council's Statement of Case
[5] Paragraph 75 of Zurich Assurance Ltd (t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708
[6] Paragraph 75 of Zurich Assurance Ltd (t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708
[7] Paragraph 5.6 of the Council's Statement of Case

these circumstances no wasted or unnecessary expenditure has been incurred by the applicant in contesting the appeal.

12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Housden

INSPECTOR