
Costs Decisions

Inquiry held on 21-24 October and 5-7 November 2025

Site visit made on 7 November 2025

by **Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Costs applications (A and B) in relation to Appeal Ref: APP/W1525/W/25/3365611 Land West of The Fox and Raven, Chelmer Village Way, Chelmsford

- The applications are 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 applications are made by the Custodians of the Chelmer Valley Water Meadows (the Custodians) for a full award of costs against Chelmsford City Council (the Council).
 - The inquiry was in connection with an appeal against the refusal of planning permission for residential development comprising the construction of 55 affordable homes, provision of open space, landscaping, sustainable drainage, ground re-profiling, formation of bund, cycle and footpath links, vehicular access from Chelmer Village Way and highway changes to Chelmer Village Way.
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Decisions

1. Costs Applications A and B for an award of costs are both refused.

The submissions and responses by the parties

2. The costs applications A and B were submitted by the Custodians on 5 November 2025 jointly against the Council and the appellants. Separate decisions have been written for the applications against the Council and the appellants given that these parties submitted separate responses.
3. As there was insufficient time left in the Inquiry programme following receipt of the costs applications, it was agreed that the responses and any final comments from the Custodians could be provided in writing within a specified timeframe. The Council's response was received on 11 November 2025 and the Custodians' final comments were received on 20 November 2025.

Reasons

4. 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The Custodians contend that the Council has behaved unreasonably on two bases.
5. **Costs Application A** relates to the proposition that it is acceptable to receive a gift, unconnected to the development to be permitted, whether or not the gift provides a different public benefit. The application sets out the three tests for planning obligations from paragraph 58 of the National Planning Policy Framework with the contention that the 'gift land' (transfer land) is not necessary, directly related, or fairly and reasonably related in scale and kind to the development. The Custodians

- contend that the offer of the land was inappropriate and the Council lacked impartiality in accepting the offer. They argue that if the transfer land was removed from the proposal, then the proposed development would be in serious jeopardy and the appeal would have been unnecessary, hence full costs are sought. Even if the appeal had proceeded without the transfer land, then the Custodians seek a partial award of costs for the time spent dealing with this matter at appeal.
6. It will be seen from my appeal decision that I consider the transfer land to form a legitimate part of the proposed development and it represents a planning benefit. There is a clear connection between the transfer land and the red line site in terms of ownership and footpath links. There are also corporate and policy aspirations for enhanced public open space and no alternative scheme before me to achieve this for the transfer land. My decision concludes that the transfer land would pass the three tests for planning obligations.
 7. There is no evidence that the Council has behaved in a manner that compromises its objectivity or impartiality. It has not been demonstrated that the transfer of land represents a 'gift' or has unduly influenced the Council on this proposal. The Council is required to consider all elements of a proposed development. In any case, permission was refused for this scheme at planning committee. Therefore, even if the Council had agreed with the Custodians on the transfer land as being irrelevant or failing to meet the three tests, an appeal would still likely have been submitted and necessary costs incurred. A partial award of costs would only be possible if I agreed with the Custodians on this matter, which I do not.
 8. As part of this costs applications, the Custodians also refer to the weakening of the Council's position during a lengthy pre-application process and the lack of public access to and involvement in meetings, with highways negotiations cited as a prime example of discussions behind closed doors. However, the pre-application process aims to reduce differences between an applicant and the Council and so there is nothing odd about the Council's changing position which, in any case, still led to a refusal. Moreover, it is not feasible or reasonable to involve the public in every discussion or to provide bespoke responses to every objection. It will be seen from my appeal decision that while there could have been greater transparency regarding the evolution of highway options, it did not prevent me or others from assessing the development on its merits based on the evidence presented.
 9. Concluding on Costs Application A, there has been no unreasonable behaviour from the Council that has led to unnecessary or wasted expense in the appeal process. Thus, a full or partial award of costs against the Council is not justified.
 10. **Costs Application B** relates to the sequential test, which the Custodians contend was contrived and passed by defining parameters that were unreasonably narrow and exclusively relied on the inclusion of the transfer land which is not part of the development to be permitted. The Custodians argue that the area of search was too small and based on the premise that the housing and strategic open space had to be found in the same location. They contend that the Council was at fault by accepting the appellants' approach and findings and that a flawed test puts the whole permission at risk. Thus, a full award of costs is sought against an appeal that should not have been necessary.
 11. As noted in my appeal decision, it was unfortunate that the Council did not appear to determine an appropriate area of search as required by the PPG. However, there

is nothing unreasonable about the Council agreeing with the search area put forward by the appellants. Officers covered the sequential test in the committee report and so were actively engaged in the process. They were aware of the Custodians' objections dating back to October 2023 and came to a reasoned view of the overall proposal. The Council is entitled to maintain or amend its position on specific matters depending on the evidence presented. There is no basis to claim that the offer of the 'gift land' skewed the Council's handling of the application or the sequential test. Planning permission was ultimately refused by the Council.

12. My appeal decision finds that it was reasonable to include the transfer land within the area of search and to focus on land to the east of Chelmsford given the corporate and policy aims of the Council. My decision also finds that the housing site and the transfer land are connected and that the proposed development was the only option before me for the delivery of improved strategic open space.
13. Nevertheless, even if I had agreed with the Custodians and concluded that the sequential test was not passed, this would not necessarily have prevented planning permission from being granted. I would have been required to consider case law and other appeal decisions to decide whether it was a matter to weigh in the planning balance rather than automatically dismiss the appeal.
14. Concluding on Costs Application B, there has been no unreasonable behaviour from the Council that has led to unnecessary or wasted expense in the appeal process. Therefore, an award of costs against the Council is not justified.

Tom Gilbert-Wooldridge

INSPECTOR