



Costs Decision

Site visit made on 5 December 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd January 2026

Costs application in relation to Appeal Ref: APP/L3625/W/25/3369454 171-173 Frenches Lodge, Frenches Road, Redhill, Surrey RH1 2HZ

- 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 Hopewell Housing Ltd for a full award of costs against Reigate and Banstead Borough Council.
 - The appeal was against the refusal of planning permission for an Outline application with all matters reserved for demolition of former rehabilitation centre and erection of new 3 storey supported housing block containing 11 self-contained C2 units, plus staff office.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (PPG) advise that irrespective of the outcome of an appeal, 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. Paragraphs 16-047-20140306 and 16-049-20140306 of the PPG advise authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters in relation to, and the substance of matters, setting out a list of possible examples of such behaviours.
3. The appellant has referred to several of these behaviours it believes the Council has demonstrated. Procedurally, amongst other things, it considers the Council provided information shown to be manifestly inaccurate or untrue, only supplied relevant information at appeal when it was previously requested at the application stage, and introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
4. In substantive terms the appellant considers the Council has prevented or delayed development which should clearly be permitted, failed to produce evidence to substantiate each reason for refusal, made vague, generalised or inaccurate assertions about a proposal, refused permission on grounds capable of being dealt with by conditions, has acted contrary to, or not followed, well-established case law, refused to provide reasonably requested information when a more helpful approach would probably have resulted in the issues being narrowed, persisted in objections to elements of a scheme which an Inspector has previously indicated to be acceptable, not reviewed their case promptly following the lodging of an appeal, and not determined similar cases in a consistent manner.

5. It is clear the Council reviewed its case upon the appeal being lodged and through the appeal process due to the submission of further substantive technical evidence, withdrew its objection to BNG and daylight. The appellant's appeal evidence upon these matters was necessary to justify this position. Effects such as upon character and appearance, living conditions and protected species are matters upon which the Council still found policy conflicts and harm, as did I. Matters such as ministerial statements, other appeal decisions, housing land supply (HLS), and need for this accommodation are matters to be weighed in the balance and do not directly address reasons for refusal.
6. The appellant's technical HLS evidence was submitted with the appeal, which the Council engaged with, explained why it considered certain sites should not be discounted, and its view of future national requirements to calculating needs. It is an important principle that each case is considered on its own merits and impacts, based upon the submitted evidence. The full evidence before Inspectors in other submitted appeal decisions is unclear, and, the balance of benefits and harms referenced, are simply not directly comparable to this scheme.
7. As a matter of planning judgement, the Council's view there would not be a substantial benefit in these regards, or they do not outweigh the harms and policy conflicts does not appear to be an unreasonable one given the number of dwellings and estimated supply position. The appellant does not define what a 'screaming demand' is or demonstrate that there can currently be said to be one for this type of accommodation. Therefore, having regard to the matters raised, it is simply not demonstrated the Council behaved unreasonably and resulted in unnecessary or wasted expense in the appeal process in these regards.
8. The reasons for refusal cannot be regarded as peripheral matters. Though this is an outline scheme, the appellant has simply not demonstrated that most those reasons for refusing permission were capable of being dealt with by conditions, and I consider the Council's concerns were substantiated. For reasons set out in my decision letter, the evidence leads me to the view that only one of the reasons for refusal are demonstrated to have been capable of being addressed by planning conditions. Some others required technical evidence at the appeal stage. It is not substantiated the Council prevented or delayed development that should clearly be permitted, resulting in necessary or wasted expense in the appeal process.
9. Noting the timeline of events, correspondence and requirements for certain reports submitted before the appeal was made, the appellant could have yet did not appeal the Council's decision not to validate or determine the application. The PPG advises that costs cannot be claimed for the period during the determination of the application and that costs unrelated to the appeal are ineligible. Therefore, insofar as they relate to matters during application determination, and not grounds upon which the Council refused the scheme, I have not considered these further.
10. In respect of flood risk and drainage matters, given the policies set out at Framework paragraphs 181 and 182, the PPG in respect of the drainage hierarchy, the circumstances of the appeal site, and the nature of this proposal, it was necessary to provide the Flood Risk Assessment and Drainage Strategy, to ensure the scheme would be acceptable as a matter of principle, so this was not an unreasonable requirement.

11. However, the evidence and correspondence demonstrate the scheme complies with the development plan and Framework policies in this regard, subject to the imposition of suitably worded planning conditions, for a scheme in outline with all matters reserved. The evidence, level of betterment achievable, and scope for planning conditions appears to demonstrate the scheme could also meet the Non-statutory technical standards for sustainable drainage systems (the NSTS) requirement that it should drain as close as reasonably practicable to greenfield rates and shall not exceed the pre-development rate.
12. Though the Lead Local Flood Authority sustained an objection, the Council is not bound by specialist advice and is required to exercise professional judgement in reaching a view. Therefore, in this regard, in sustaining its objection the Council has behaved unreasonably in pursuing this reason for refusal and resulted in the appellant incurring unnecessary and wasted expense in the appeal process.
13. The reasons for refusal in respect of protected species are clear and fully justified in-light of the relevant policies, guidance and legislation. Therefore, the Council has not behaved unreasonably in refusing the application on this ground and pursuing this in the appeal. The evidence points towards the appeal site not benefitting from an exemption to Biodiversity Net Gain (BNG) due to scale and degradation activities, so the scheme is subject to statutory BNG requirements.
14. While noting the extracts of a costs decision¹ in respect of former National Planning Policy Framework paragraph 38, the PPG² requires where degradation activities have taken place, the applicant 'must provide', amongst other things, the pre-development site biodiversity value on the date immediately before the degradation activities took place. This is necessary to give the Council reasonable assurance the statutory BNG requirement can be achieved. Necessary and sufficiently rigorous evidence was not ultimately provided until the final comments stage, so unreasonable behaviour and unnecessary or wasted expense in the appeal process has not been demonstrated in this regard. Similarly in respect of daylight, following sufficient and necessary substantive evidence, the Council has withdrawn its objection to that part of the reason for refusal.
15. An assessment of outlook requires some level of planning judgement. This is not a matter that should simply be set aside due to the approval of other schemes, and it is necessary to understand as a matter of principle, the levels of outlook that could be achieved. The appellant's evidence does not demonstrate the effects for existing occupiers and to be experienced by future occupiers would not result in material harm or policy conflicts, or demonstrate the scope of reserved matters submissions could avoid these. I find the Council's case adequately substantiated in this regard, and so it has not behaved unreasonably or caused unnecessary or wasted expense in the appeal process on this matter.
16. However, for reasons set out in my decision letter, I have found a very limited effect in respect of privacy and overlooking, and I see little of substance by the Council to demonstrate harm of any significance in this regard. Therefore, I find the Council has not substantiated its case in this regard. This is unreasonable behaviour that has caused unnecessary or wasted expense in the appeal process.

¹ Ref. APP/K0425/W/21/3278538.

² Ref. Paragraph: 036 Reference ID: 74-036-20240214.

17. The DMPO³ states a decision notice must include a statement explaining, whether, and if so how, the Council has worked with the applicant in a positive and proactive manner. National Planning Policy Framework (2024) (the Framework) paragraph 39 states the Council 'should' approach decisions in a positive and creative way, so it is a policy aspiration not a legal duty. It is apparent that there are some fairly fundamental concerns with the scheme that the appellant has not ultimately addressed satisfactorily to mean the appeal should be allowed.
18. The evidence suggests that once the application had been validated, the first meaningful engagement from the Council upon matters of concern was very close to the end of the determination period, which can neither be regarded as positive or proactive. However, though it was very late on in the initial determination period, there are emails from the Council on 22 July and subsequently on 26 July 2024 very clearly articulating several concerns upon which the Council ultimately found the proposal unacceptable. Certain points raised were detailed design matters which might well be addressed in reserved matters, but there are several others that go to the scheme's principle.
19. In some circumstances, not meeting the duty during the application process, might subsequently lead to unnecessary or wasted expense⁴. The PPG⁵ advises that costs applications may relate to events before the appeal or other proceeding was brought. However, costs that are unrelated to the appeal are ineligible. This is not a direction that all prior costs related to the appeal are eligible and the evidence does not justify awarding the expense of the application from the application's expiration date of 22 July 2024.
20. Even if delays in the Council communicating with the appellant constitute unreasonable behaviour, it would be, in my experience, highly unusual to provide a draft report, particularly when it was anticipated that further details to address matters would be provided. The description of development suggests five amendments or submissions were made, so there have been opportunities to address matters. Noting this, the length of determination period, and the evidence provided, does not demonstrate the Council has not made reasonable efforts to address matters. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is not demonstrated in this regard.
21. It was made clear to the appellant in July 2024 the scheme was not exempt from BNG, so sufficient evidence was required and in December around 7 weeks before the application was determined it was further made clear BNG was likely to form a reason for refusal. If, as asserted by the appellant, the Council withheld an email from their technical adviser upon this matter for several weeks, this could be regarded as unreasonable behaviour. However, it was necessary for the appellant to produce the evidence, and it would not have resulted in a different outcome to the appeal. Therefore, there has been no unnecessary or wasted expense incurred in addressing this matter.
22. Even if I were to agree the weight attributed to various principal points by the Council in the planning balance was not fully clear, it did not reach an incorrect conclusion upon the overall balance of considerations, and, were it to have set these out more fully, there would not have been a different outcome. Given I have

³ Article 35(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

⁴ Ref. APP/J0350/W/21/3276189, APP/J0350/W/21/327619 and APP/K0425/W/21/3278583.

⁵ Ref. Paragraph: 032 Reference ID: 16-032-20140306.

found them adequately reasoned, they would have needed to have been addressed, so this has not resulted in unnecessary or wasted expense in the appeal process.

23. It is not demonstrated the Council has provided information that has been shown to be manifestly inaccurate or untrue, only supplied relevant information at the appeal stage when it was previously requested, or that it has introduced fresh and substantial evidence at a late stage of the appeal, resulting in unnecessary or wasted expense in the appeal process.
24. Neither is it demonstrated the Council has acted contrary to well established caselaw, resulting in unnecessary or wasted expense in the appeal process. A costs decision letter⁶ the appellant has provided where I allowed a full costs award against a different Council was in very differing circumstances to this appeal. In that case a Council had proceeded with a view contrary to a Consent Order upon a specific legal principle, and acted contrary to well-established caselaw, which resulted in that appeal. The decision letter identified when the Council's approach to certain matters was incorrect, but it does not specifically award costs for '...part of the application, spanning back 2 years' in that decision letter.
25. For the reasons set out, I find many of the Council's reasons for refusal well-founded and adequately substantiated. While some time delays could be regarded as exhibiting unreasonable behaviour, unnecessary or wasted expense in the appeal process has not been demonstrated on many counts the appellant alleges. However, for the reasons set out, a partial award of costs is justified for costs incurred specifically in the appeal process in respect of reason for refusal No. 4) relating to flood risk and drainage matters, and part of reason for refusal No. 2) in respect of loss of privacy, on the Council's decision notice dated 30 January 2025.

Costs Order

26. 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 Reigate and Banstead Borough Council shall pay to Hopewell Housing Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in the appeal process for addressing reason for refusal No. 4) relating to flood risk and drainage matters, and part of reason for refusal No. 2) in respect of overlooking and loss of privacy, on the Council's decision notice dated 30 January 2025; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to the 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.

Mr D Szymanski

INSPECTOR

⁶ Ref. APP/J0350/W/19/3243603