



Costs Decision

Hearing held on 17 December 2025

Site visit made on 17 December 2025

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Costs application in relation to Appeal Ref: APP/V4630/W/25/3372783 520 Simons Restaurant, Chester Road, Walsall, Aldridge WS9 0PU

- 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 The Little Ripley Day Nurseries Ltd against Walsall Metropolitan Borough Council.
 - The appeal was against change of use of vacant restaurant and cafe (Class E(b)) to Class E(f)) children's nursery (up to 130 children) and associated access, parking and landscaping (resubmission of refused Appeal ref: APP/V4630/W/24/3348824).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 appellant's claim for costs relies on that the Council has acted unreasonably because they have prevented or delayed development which should clearly be permitted, have failed to produce evidence to substantiate each reason for refusal on appeal, used vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Also that the Council have refused planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead, acting contrary to, or not following, well-established case law and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. The appeal follows the Council's failure to determine the application within the prescribed period. However, the Council has indicated in its statement, that had the Council determined the application, it would have refused planning permission. The substance of the Council's statement has informed the main issues of the appeal and costs application.

5. The Council's first reason for refusal relates to the proposed introduction of a pedestrian refuge island. I can acknowledge the appellants consideration that the Council's comments on the matter are somewhat confusing and contradictory, however, it is evident that the Council's intention was to provide all comments to the appellant during the consideration of the application in order to reach a suitable design and address any concerns.
6. I have found that this matter can be dealt with by an appropriately worded planning condition, however, it is likely that this matter could have been resolved during the consideration of the application. Specifically, an appropriate design of the pedestrian refuge island could have been reached, and this could have formed one of the approved plans, negating the need for a planning condition.
7. I find that the Council's various highway comments are generally unclear and unhelpful and their comments on the Stage 1 Road Safety Audit being generally unfounded. Nonetheless, design changes, however minor are still required and this is a matter that could have been resolved during the consideration of the application, particularly as this was not the Council's only concern with the application and as such, I do not find that the Council have demonstrated unreasonable behaviour in this regard.
8. In regard to the Council's reason for refusal concerning a travel plan, their reason for refusal in respect of this matter relies on guidance contained within the Customer Guide to Completing Planning Obligations which suggests that travel plans should be secured by a planning obligation.
9. The appeal site was subject to a previous appeal decision¹ whereby it was found that while the Council's preference was to secure a travel plan by a planning obligation, there was no reason why this could not be secured by a suitably worded planning condition.
10. The previous appeal decision was discussed at the hearing, and it was agreed by the parties that the only material difference between the schemes was the pedestrian refuge island that was proposed as part of the scheme subject to this appeal. This change is unrelated to the travel plan and does not provide a reason to come to a view that is contrary to the previous Inspector and as such, I find that the Council's persistence of this reason for refusal is unreasonable.
11. The Council's third reason for refusal related to the absence of a completed Section 106 legal agreement to secure Biodiversity Net Gain (BNG). A planning obligation was not submitted during the course of the Council's consideration of the planning application and as such, the Council were not unreasonable to include this reason for refusal. While a UU was submitted with the appeal and there have been various discussions and correspondence in relation to the UU, these matters would have had to have been resolved at some point during the consideration of the application, and I therefore do not find any wasted expense has occurred.

¹ APP/V4630/W/24/3348824

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Walsall Metropolitan Borough Council shall pay to The Little Ripley Day Nurseries Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the Council's reasons for refusal relating to a travel plan; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Walsall Metropolitan Borough 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.

D Wilson

INSPECTOR