



Costs Decision

Hearing held on 17 December 2025

Site visit made on 18 December 2025

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2026

Costs application in relation to Appeal Ref: APP/V2255/W/25/3372645

Land off Riddles Road, Borden, Sittingbourne, Kent, ME9 8HP

- 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 Fernham Homes Operations Limited for a partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for 'Erection of 38 no. residential dwellings, together with associated two access points, open space, landscaping, drainage, and infrastructure works.'
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Decision

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

Reasons

2. The application for a partial award of costs was made in writing by the applicant the evening before the hearing. During the hearing the applicant confirmed they no longer wished to pursue the second ground for costs ('Ground 2') and accordingly I shall only consider the first ground for costs, relating to ecology matters. The Council provided its response to the application verbally at the hearing and the applicant gave their final comments.
3. 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.
4. The applicant considers the Council behaved unreasonably in respect of its second reason for refusal, relating to effects on protected species, which went against officer advice. Members of the Planning Committee were entitled to reach a different view from its officers and this is a fundamental principle of local decision making.
5. However, the application and appeal were accompanied by technical reports prepared by suitably qualified specialists. It was stated by an interested party during the hearing that it was disappointing those documents were not reviewed by an independent party. However, this did occur as the documents were reviewed by the Biodiversity Officer of the County Council, who was consulted three times on the application and commented specifically that the ECIA¹ was sufficient and that

¹ Ecological Impact Assessment, August 2024

no ecological surveys were required in respect of protected or notable species. The Officer's Report clearly recounts those findings to the Planning Committee².

6. It is not clear, based on what I have seen, why a contrary view was subsequently reached or that there was conflicting technical evidence to contradict, or draw into doubt, the applicant's findings and the conclusions of the Biodiversity Officer. The committee minutes refer to generalised concerns for wildlife corridors. It is not clear in what way the technical information provided by the applicant was inadequate, or why the matter could not be reasonably addressed by the imposition of planning conditions as suggested. This is similarly not substantiated in the Council's case, which refers to the presence of badgers in the surrounding area, which was already acknowledged within the ECIA. The potential effects of habitat 'squeezing' were also put forward during the appeal, although not supported by any compelling evidence to demonstrate the proposal would cause harmful effects.
7. As such, the Council failed to produce evidence to substantiate its second reason for refusal, and made vague, generalised assertions about the proposal's impact, which were unsupported by any objective analysis. These are both among the examples of unreasonable behaviour given in the PPG. As set out in the appeal decision, the ecological impacts of the proposal were capable of being dealt with by condition. In turn, the Council's behaviour caused the applicant to incur unnecessary expense in the appeal process, through the need to respond to the second reason for refusal.
8. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's second reason for refusal and a partial award of costs is therefore warranted, as set out in the PPG.

Costs Order

9. 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 Swale Borough Council shall pay to Fernham Homes Operations Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Swale 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.

C Shearing

INSPECTOR

² 'Report to Planning Committee 17th July 2025