



Costs Decision

Site visit made on 6 January 2026

by **B Plenty BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2026

Costs application in relation to Appeal Ref: APP/U1105/W/25/3369195 Land East Side of Oak Hill, East Budleigh EX9 7BL

- 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 Clinton Devon Estates for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the change of use of land for the siting of three holiday cabins and conversion of existing forestry building to provide for holiday use, creation of parking area, bat building, bin storage and landscaping.
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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 appellant has made this application for costs on both substantive and procedural grounds. It is asserted, in substantive terms, that the Council has failed to substantiate its reasons for refusal in failing to engage with the appellant's professionally prepared reports and by refusing to resolve technical matters, such as ecology and lighting, that could have been addressed with conditions.
4. Procedurally, the appellant asserts that the Council did not offer a collaborative approach to the decision-making process in failing to fully engage with the appellant, undertook insufficient consultation with key consultees, the process included administration issues and inconsistencies in the Decision Notice and the Council introduced new reasons for objection at the appeal stage.

Failed to substantiate the reasons for refusal

5. The PPG states that a Council could be vulnerable to a successful costs claim if it failed to *"Produce evidence to substantiate each reason for refusal"* and should avoid *"vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis"*.
6. The Council clearly took the appellant's assessments into account when preparing its Statement of Case. The extent to which it decided to engage with this evidence was primarily a matter for the Council. An alleged absence of engagement with the this evidence does not mean that the Council failed to adequately defend its reasons for refusal. Furthermore, I have found in my main decision that the

proposal would result in only 'minor' adverse harm to the landscape character and visual effects. This view was reached in consideration of all evidence provided by both parties.

7. There is no requirement for the Council to provide its own Landscape and Visual Impact Assessment or lighting assessment just because one was produced by the appellant. Moreover, I do not find that the Council made only subjective speculations that were vague and generalised. The Council engaged with the appellant's evidence by the relevant sections within its Statement of Case which I am satisfied clearly set out the Council's concerns.
8. Consequently, the Council's approach to defending the reasons for refusal, and reaction to the appellant's evidence, does not demonstrate unreasonable behaviour.

Refused to resolve technical matters by conditions

9. Planning Practice Guidance explains that a Council could be vulnerable to an award of costs if it refuses permission which is "*capable of being dealt with by conditions... where it is concluded that suitable conditions would enable the proposed development to go ahead.*"
10. The Council failed to explain why a condition could not be imposed to resolve its concerns with respect to colour. This is a matter that could have been resolved by condition and as such it was unreasonable for the Council to not come to this conclusion. However, it is in itself a minor matter as the first reason for refusal raised issues that were broader than the colour of the cabins. Therefore, a condition to address colour would have been ineffective alone to address the Council's concerns.
11. In terms of a condition to resolve ecology matters, the appellant asserts that the Council's ecologist indicated satisfaction if the replacement bat provision were provided as single-skin blockwork building instead of the proposed wooden structure. The appellant demonstrates such a revision was offered during the application process.
12. In the main decision I have found that a condition to secure a different building to that proposed would be an unsuitable method to secure the required bat mitigation. Instead, such details should have been part of the application to allow proper consultation with respective consultees to take place. Therefore, whilst the Council has only raised a failure of the derogation tests at the costs stage, suitable mitigation (including all associated details) must be provided in advance of a positive decision being made to ensure the preservation of the protected species. Accordingly, the Council has not behaved unreasonably in this matter.
13. The Council has provided comments from its ecologist in its 'costs' rebuttal. Despite the Council's efforts to provide clarity here, it has introduced new evidence at an extremely late stage in the process. This deprives the appellant and third parties of an opportunity to respond to the matters raised and has undermined the principles of procedural fairness. This, therefore, amounts to unreasonable behaviour.

Collaborative approach?

14. The PPG explains that a procedural ground for costs to be awarded against a Council could include where it has provided a lack of co-operation with other parties. This is primary focussed on conduct during the appeal process but could also, in some circumstances, include conduct during the application process. The appellant asserts that whilst it agreed an extension of time for the Council to determine the application, this was to allow its objections to be resolved. However, agreeing to an extension of time does not guarantee a positive outcome for the applicant.
15. It is also asserted that the appellant did not receive a response from the Council to its offered revised ecological mitigation. The Council informed the appellant, that its objections could not be readily overcome by minor alterations and the scheme required a fundamentally different approach. It states that where it finds a fundamental objection to a scheme it will not negotiate. Therefore, whilst the Council was unable to make a favourable decision, in this case, it did so within agreed timeframes meeting agreed expectations. As such, this does not demonstrate unreasonable behaviour.

Consultation with consultees

16. The appellant asserts that the Council failed to consult its own internal consultees with respect to landscape and lighting impacts. However, this is an internal matter for the Council to decide how and when to use internal and external consultees and has no material bearing on whether the Council behaved unreasonably.

Administrative errors

17. The appellant notes that the Decision Notice omits some of the submitted documents and states that the proposal would be in conflict with Strategy 26 (relating to development in Sidmouth). These errors have been confirmed by the Council and have been addressed in my main decision. Whilst these errors are noted they are minor matters. They do not clearly demonstrate a pattern of poor administrative practice and do not therefore amount to unreasonable behaviour.

New objections

18. The Council's officer report explains that; *"The proximity of the site to existing public footpaths into East Budleigh, with its shop and pub, as well as access to local bus services... would help to reduce the traffic impacts of the development... the proposal would be in accordance with Local Plan policies TC2, TC7 and TC9."*
19. Whereas the Council's Statement of Case identifies that *"that the use of unmade and unlit paths to East Budleigh would make car travel inevitable for year-round accommodation, implying unsustainable access"*.
20. Whilst the appellant asserts this identifies a contradiction, I find that both statements are correct and do not claim opposing views. The site is well connected to local footpaths, providing access to services within East Budleigh, but these footpaths would be less attractive to tourists to use in poor weather and when it is dark. Nonetheless, I am unsure why the Council makes this point in its Statement of Case as the two reasons for refusal relate to character and appearance and ecology and can only have a passing relevance to the issues in dispute.

21. As such, I do not consider that the Council has raised new points of objection at the appeal stage. Even if this did amount to a further point of objection it has not had a material effect on the main considerations of the appeal and as such is not regarded as unreasonable behaviour.
22. The Council identifies that the proposal would be contrary to Strategy 33 (promotion of tourism in East Devon) of the East Devon Local Plan [2016]. The Council's officer report identifies this policy as providing support for the scheme, and it is not referenced in the Reason for Refusal. However, the Council's Statement of Case states that "Strategy 33 provides support subject to the proposal not damaging the natural assets of the district. As such, granting permission would not be justified". Here and in the Council's costs rebuttal the Council finds conflict with this policy, but I have not, finding only moderate harm to the area's landscape character. In introducing new policy conflict in this manner results in unreasonably behaviour.

Conclusion

23. In summary I have found in most grounds raised by the applicant, the Council has not behaved unreasonably. Nonetheless, in regard to the introduction of ecology comments at the 'costs' rebuttal stage and in finding conflict with LP Strategy 33, in its statement of case and costs rebuttal, I have found unreasonably behaviour. However, I am unconvinced that this behaviour alone has resulted in wasted expense as these discrete matters have had a limited bearing on the appellant's overall case and thus the application for an award of costs fails.

B Plenty

INSPECTOR