



Costs Decision

Hearing held on 20 January 2026

Site visit made on 21 January 2026

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2026

Costs application in relation to:

Appeal A Ref: APP/R1038/X/25/3371960

Appeal B Ref: APP/R1038/W/25/3371958

Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR

- The application is made under the Town and Country Planning Act 1990, sections 78, 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Daren Atkinson for a partial award of costs against North East Derbyshire District Council.
 - Appeal A was against the refusal of a certificate of lawful use or development for Use of land for domestic garden, drives and yarding and for any purpose incidental to the enjoyment of the dwellinghouse.
 - Appeal B was against the refusal of planning permission for The retention of garage and store/workshop and provision of hipped roof.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr Daren Atkinson

2. The costs application was submitted in writing. In summary the application is made on four grounds. Firstly the appellant states that the Council has sought to unreasonably disapply Policy LC5 of the development plan and to discount the development on grounds of principle; secondly that its approach to assessing impact on the character and appearance of the landscape was unreasonable; thirdly that its approach to assessing impact on the non-designated heritage assets was unreasonable; and finally that its approach to the certificate of lawfulness application was unreasonable.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.

Principle of development

4. Policy LC5 of the Council's Local Plan permits in principle the development of residential outbuildings that are ancillary to the main residential use, subject to various criteria.

5. The appellant's position is that there is nothing in the wording of the policy to limit its application to land already in residential use. However, whilst not expressly recognised in the policy wording, I concur with the Council that an ancillary activity can only occur where there is a pre-existing primary use that it depends on, and thus where the ancillary activity falls within the same planning unit.
6. In finding that the appeal site was situated outside the residential planning unit, it was not therefore unreasonable for the Council to disapply Policy LC5, or to take a position that a condition limiting the use of the structure to ancillary residential purposes would be inappropriate. I disagreed with the Council as to whether the appeal building was situated within the same residential planning unit as the dwelling. Accordingly, I found Policy LC5 to be applicable, and for this to translate into appropriate wording for a planning condition. However, this did not make the Council's stance unreasonable.
7. The Council set out, as part of its reason for refusal, that the proposed building was not considered to be on residential land. Though it did not explicitly refer to Policy LC5 in its refusal notice, when read together with the strict control over development, set out within the Neighbourhood Plan, I do not consider it was unreasonable to find the proposed building to be unacceptable in principle. Whilst I did not agree with the Council's conclusions on this matter, its position was arguable.
8. The Council found the development to be in conflict with Policy SS9, because it failed to respect the character of the landscape and countryside. I have some sympathy with the appellant's point that the principle of development, in itself, would not be at odds with the positive construction of Policy SS9. However, this point can be made relatively straightforwardly and succinctly. Overall, I am not persuaded the appellant has been subject to unnecessary or wasted expense with regard to its case regarding the principle of development. The appellant acknowledges this is not development that should have clearly been permitted.

Landscape

9. The appellant's case is the Council has failed to undertake a thorough assessment of landscape effects, including by acknowledging wider landscape characteristics such as built form and materials. They say the assessment has been overinflated because it was undertaken by a planning officer rather than a qualified landscape architect.
10. Consideration of the landscape and visual impacts of proposed developments is required by the National Planning Policy Framework (the Framework). Landscape impact assessment is concerned with changes to the overall landscape character as a public resource; visual impact assessment with visual amenity at different places.
11. I concur with the Council there is no statutory, policy or other requirement for a discrete Landscape Visual Impact Assessment to be undertaken or for a specific methodology to be followed. It seems to me that the approach should be proportionate to the scale and nature of the proposed development.
12. The Council's evidence described the landscape character, referring to its sensitivity in terms of scenic quality and historic value. It explained how the appeal site is considered to be part of a 'valued landscape', and that the proposed building

was considered to be visually intrusive within it, despite other built form in the area and because of scale and choice of materials. Whilst the Council may have conflated the landscape and visual impact assessment, I am not persuaded it has failed to articulate its refusal reason on landscape and visual grounds.

13. As to criticism that the Council failed to involve a qualified landscape professional, it was under no obligation to do so. Furthermore, I concur with the Council that this is a matter planning officers are capable of reaching a reasoned position on in most cases, through the exercise of professional judgement. Whilst I did not agree with the Council's findings, I do not consider the Council to have acted unreasonably in this regard.

Heritage

14. The appellant's case is that the Council failed to explain why the significance of the non-designated heritage asset was diminished; that it failed to identify the magnitude of harm and thus logically the assessment of weight was also flawed. They say the Council adopted a disproportionate level of scrutiny in this case, in relation to which a detailed response should not have been necessary.
15. The Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
16. The Council identified that the walled grounds of the house contributed to the significance of the asset. It explained how, in its judgment, the proposed building would obscure views of the wall, and draw the eye as a dominant feature. I agree the Council chose to adopt a high degree of scrutiny in this case. However, it explained its concerns, and whilst I did not agree with the Council's stance regarding impact, it did not act unreasonably. Furthermore, notwithstanding the terminology used to describe the harm found, in exercising its professional judgment and placing greater weight on harm than benefit in the balance, it also did not act unreasonably.
17. I do not accept the Council's decision represents a prohibition on other householder development that may be harmful in some way to a non-designated heritage asset. The Council would be required to deal with each case on its individual merits.

Lawful Development Certificate

18. The appellant argues that it was unreasonable for the Council to suggest that recreational activities undertaken by the occupiers of Marsh Green Hall could have amounted to a distinct planning use. This is particularly so, as it was conceded by the Council at the Hearing that it did not argue there was an absence of functional linkage between these activities and the residential use.
19. No evidence was presented to contradict the appellant's position, as set out within statutory declarations, regarding various recreational activities having been undertaken by residents. Nevertheless, the appellant is still required to provide a probable version of events and evidence that is sufficiently precise and unambiguous. That the recreational uses were materially different to the residential use, based on their character and scale, was not an unreasonable argument for the

Council to make, particularly considering the information provided about this was relatively vague. It presented a reasonable challenge to the claim that the recreational uses were probably incidental.

Conclusion

20. Therefore, drawing all the above considerations together, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

R Merrett

INSPECTOR