



Costs Decision

Hearing held on 14 January 2026

Site visit made on 15 January 2026

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2026

Costs application in relation to Appeal Ref: APP/B3410/W/25/3372774

Land adjacent to 374a Tutbury Road, Burton upon Trent, Staffordshire DE13 0AL

- 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 Mr. R Kirkland, of Maplevale Developments Ltd for a full award of costs against East Staffordshire Borough Council.
 - The appeal was against the refusal of planning permission for an outline application for the erection of up to 40 affordable dwellings (28 first homes and 12 affordable rented) including details of access.
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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 PPG also sets out that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to: its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. In addition, the PPG identifies the type of behaviour that may give rise to a procedural award against a local planning authority, which includes a lack of co-operation with the other party or parties; not agreeing a statement of common ground in a timely manner; withdrawal of any reason for refusal; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The appellant has set out that the Council's Planning Committee Members (PCM) refused the scheme with no technical or environmental objections, and against the advice and recommendation of its Head of Service, and the first reason for refusal does not allege any conflict with the development plan, nor any harm arising. The claimant also suggests that, unreasonably, the Council has carried out no planning balance. The appellant also claims that the Council has been uncooperative in reviewing and providing comment on the draft Statement of Common Ground

(SoCG) and the section 106 agreement (S106). There are therefore both substantive and procedural points of claim. I deal with these matters in turn below.

Substantive

6. The PCM are not bound by the advice of their officers and are entirely within their rights to exercise judgement and maintain objections where they have a legitimate basis from the evidence and information available to them. However, where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise.
7. The Council's first reason for refusal does not include any development plan policies. Instead, it lists conflict with the Written Ministerial Statement, 24 May 2021 (WMS) and the Council's Housing Choice Supplementary Planning Document, March 2023 (SPD).
8. The WMS and SPD are both material considerations, and the reason for refusal is clear and precise in that it identifies that a need, which is not already being met, has not been demonstrated. Primarily because a recent Housing Needs Survey (HNS) had not been undertaken. On that basis, I am satisfied that the PCM had legitimate concerns about whether the proposed development had suitably demonstrated a need for First Homes.
9. The Council's Statement of Case (SoC) does little to substantiate the reason for refusal. Particularly in respect of how the proposal conflicts with the WMS. However, evidence was presented within the SoC, and the Council's housing consultants provided a critique of the Housing Needs Assessment (HNA). Counter evidence to that provided within the HNA was also presented by the Council as part of that critique. This led to further detailed comments from the applicants prior to the Hearing.
10. The SoCG provided further clarity on the Council's position, and conflict with the WMS. The Council elaborated on their case at the Hearing and identified the relevant development plan policies that the proposal was in conflict with, in particular Policy SP18 of the East Staffordshire Local Plan. Why that policy did not form part of the reason for refusal is not immediately clear, and why the Council's case was not made more clear within their SoC is equally unclear. Nevertheless, the Council presented evidence to defend its reason for refusal at the Hearing. Whilst their evidence had limitations, overall I am satisfied that the Council's first reason for refusal was not unreasonable or unwarranted.
11. The Council can demonstrate a five-year supply of housing. In these circumstances, the proposal does not benefit from the presumption in favour of sustainable development, as set out at paragraph 11 of the National Planning Policy Framework. There is no substantive evidence to suggest that the PCM did not undertake a planning balance when reaching its decision on the planning application. Indeed, the Council accept that significant weight should be placed on the proposal's ability to deliver affordable housing and increase the supply of low-cost home ownership in the Borough. As such, while not explicitly set out, it can be assumed that the PCM exercised their judgement on the evidence before them

when reaching its decision and concluded that the adverse impacts of the development outweighed the benefits.

12. For the reasons given above, I do not consider that the Council's first reason for refusal was unreasonable or unwarranted or that the Council has prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations. As such, the applicant has not been put to unnecessary or wasted expense as a result of the actions of the Council in respect of reason for refusal one.
13. With regards to the second reason for refusal, it is complete, precise, specific and relevant to the application. The Parish Council and other interested parties made representations at the planning committee and notwithstanding the advice of its officer's the PCM went against that advice. I have otherwise limited information of the exact circumstances of its decision, but on reflection and presumably following further advice from its officers, the Council notified the applicant that it was withdrawing that reason for refusal. This was before the appeal was lodged.
14. Inevitably, due to the strong objections from the Parish Council and interested parties, which were highlighted at the Hearing, highway safety matters remained an issue, despite the Council withdrawing the highway safety reason for refusal. In these circumstances I am satisfied that the behaviour of the Council has not put the applicant to unnecessary or wasted expense in respect of reason for refusal two.

Procedural

15. It does appear on the face of it that the Council were not proactive in reviewing and providing comment on the draft SoCG and the S106. In particular, the final SoCG was not received until 6 January 2026, two weeks after my initial deadline. Nevertheless, correspondence was received from the Council during that time and some, albeit limited explanation was given.
16. Delays are unfortunate and while I understand the applicant's frustration in this regard, in the circumstances, and on the basis that both documents were received a week before the Hearing, I am minded to give the Council the benefit of the doubt.
17. Likewise, although the Local Housing Needs Assessment ('LHNA') dated May 2024, was not received in accordance with the appeal timetable, the Council had already made reference to it in their SoC. As it was not a published document, the Council felt it appropriate to submit the document prior to the Hearing.
18. As suggested by the applicant, the document has already been superseded by later revisions. As a consequence, although it is not clear why the May 2024 version of the LHNA was submitted, as opposed to more recent versions, it was received prior to the Hearing. Again, although the timing was frustrating, there was ample time for the document to be reviewed by the applicant. Therefore, I am not persuaded that the applicant has been put to unnecessary or wasted expense by receiving the document when it did.
19. There is no other substantive evidence which suggests that the Council were uncooperative prior to the appeal being submitted. Indeed, the Council engaged with the applicant withdrawing the second reason for refusal prior to the appeal being lodged.

Conclusion

20. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs therefore must fail.

N Bromley

INSPECTOR