



Costs Decision

Site visit made on 27 January 2026

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 March 2026

Costs application in relation to Appeal B Ref: APP/C3620/C/25/3361867

Land opposite Great Oaks, Snowerhill Road, Betchworth, RH3 7AQ

- 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 Paul Courtney for a full award of costs against Mole Valley District Council.
 - The appeal was against an enforcement notice alleging without planning permission:
 - a) The erection of a building in the approximate position shaded black on the attached plan; and
 - b) The creation of a hard surfaced access drive and area surrounding the building in the approximate position shaded blue on the attached plan
 - c) the erection of iron railings to the side of the access drive
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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. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal.
3. Paragraph 049¹ of the PPG highlights the examples of unreasonable behaviour by Local Planning Authorities (LPA) where costs can be awarded. The applicant has submitted that the LPA has acted unreasonably in that the LPA made vague, generalised or inaccurate assertions about the proposal's impact; they have not followed well-established case law; nor have they determined the scheme in a consistent manner like other cases similar to this one.
4. The applicant contends that the LPA had accepted that an agricultural use was being undertaken at the appeal site, on the basis that two prior approval notifications had been issued for the building and the access drive (MO/2021/1761 and MO/2022/0433 respectively). The prior approval notifications related specifically to agricultural development on units of 5 hectares or more under Schedule 2 Part 6 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). I would concur that at the time of the submission of these schemes the LPA must have been satisfied that the use was for agriculture, in order for the prior approvals to be issued.
5. Neither party disputes that the building or the access drive were not constructed in accordance with the submitted details. The resulting developments were of a

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

significantly higher quality and specification to those usually associated with an agricultural use. Nevertheless, the applicant submitted two planning applications in an attempt to regularise the structures, however the LPA were not satisfied, that at the time of these applications, an agricultural use remained at the site.

6. I appreciate the applicant had previously supplied evidence in the form of Agricultural Statements, at both the application and appeal stages. Nevertheless, the use at a site can change over time. Based on the information before them at that time, and following site visits undertaken, the LPA were not satisfied on the balance of probability, that there was sufficient, precise and unambiguous detail to conclude the current use was an agricultural one. Indeed, during my site visit, I would concur that the existing facilities provide the appearance of a use more akin to an automotive garage or manufacturing use, rather than an agricultural one.
7. Be that as it may, I have reached an alternative conclusion to the LPA, finding from the information submitted that the use is one of agriculture. Whilst I have reached this alternative view, the enforcement notice was nevertheless clear and there was sufficient information before me to enable me to understand the case made by the LPA. It follows that I am satisfied that they advanced a case, in the form of their delegated report and Statement of Case, that in their opinion, indicated why the proposal was contrary to the GPDO. In my view these were not vague, generalised nor inaccurate, albeit I disagreed with their findings. Therefore, I cannot conclude that the Council had behaved unreasonably in respect to this issue.
8. The applicant further contends that the LPA failed to apply well-established case law, in respect to a fallback position with specific regard to *Mansell*². Here the courts held that in considering a fallback position there should be a realistic prospect of a development considered under the fallback position being approved. The fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Although the weight attributed, is a matter for the decision maker.
9. The conditions under Schedule 2 Part 6 Class A of the GPDO are specific. At A.2(2) these state that the erection, extension or alteration of a building or the formation or alteration of a private way **must not begin** before the applicant has received written notice that prior approval is not required; or within 28 days that such prior approval is required; or the LPA fails to determine the scheme. Given that the developments have both been completed prior to the applicant receiving any of the above notification, for the structures as built, these prior approvals are no longer implementable. Therefore, there is no theoretical prospect of these being constructed, thus no fallback position. Consequently, I cannot agree that the Council has acted unreasonably in this matter.
10. The applicant also contends that the LPA have not determined their cases in a consistent manner given previous prior approval applications made for similar developments to the Authority. The applicant makes specific reference to cases³ where less detail had been supplied in support of these applications. I have been provided with limited information on the level of detail that was supplied with these other prior approvals issued by the LPA. Nevertheless, the LPA issued prior approvals under references MO/2021/1761 and MO/2022/0433 at the appeal site as well, which suggests that the LPA has assessed all the schemes consistently

² *Mansell v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314

³ Mole Valley District Council Planning Refs: MO/2024/1889PN and MO/2024/1600PN

against the GPDO. In this sense, it cannot be said that the LPA failed to determine similar cases in a consistent manner.

11. Where the LPA reached different assumptions and conclusions in regard to the current appeal proposals, is in respect to a perceived material change from agricultural use. As stated above, I have reached an alternative view on this matter, but nevertheless the LPA refused the planning applications, and consequently served the enforcement notice considering it expedient to do so. Whilst the applicant will disagree with both the LPAs assessment of the schemes and subsequent action taken, this in itself does not amount to unreasonable behaviour.
12. Consequently, I do not find that the delays in the LPA determining the application prevented a development which should clearly have been permitted, nor do I find there was any unnecessary or wasted expense in providing additional information as the Authority's case was well-founded and justified. As parties in planning appeals and other planning proceedings normally meet their own expenses, I therefore find that unreasonable behaviour by the LPA, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that no award of costs is justified.

Robert Naylor

INSPECTOR