



Costs Decision

Hearing held on 23 October 2025 and 13 January 2026

Site visit made on 23 October 2025 and 12 January 2026

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2026

Costs application in relation to Appeal Ref: APP/M1595/Q/25/3368235

Lawns Court, Thomas Bata Avenue, East Tilbury, Essex RM18 8FQ

- 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 Ingleton Luxury Homes Lawns Court Ltd for a partial award of costs against Thurrock Council.
 - The appeal was against the refusal to modify a planning obligation dated 3 July 2018.
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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 applicant is seeking his costs following the first adjournment of the hearing on 23 October 2025. In brief, the applicant is of the view the adjournment was caused by the Council raising and then pursuing legal arguments relating to the scope of s106A and s106B of the Town and Country Planning Act (the Act) and the Subsidy Control Act 2022. It is argued that the points raised were clearly wrong in law and had they not been made then an adjournment would have been unnecessary. It is opined that the applicant was put to unnecessary expense in all matters after the first adjournment occurred, including attendance of the resumed hearing on the 13 January 2026 and instructing Counsel to address the legal submissions. The PPG lists examples of procedurally unreasonable behaviour as including the introduction of fresh and substantial evidence at a late stage necessitating an adjournment.
4. The Council's reason for refusal bears no relation to the legal points subsequently raised during the appeal. Indeed, there is an apparent contradiction as the Council assessed and refused the application on viability grounds, and even instructed specialist viability consultants, but then argued on appeal, without any prior signposting, that viability is not a lawful consideration in a s106A case. The Council's case has clearly evolved significantly by introducing fresh and substantive submissions in the form of a legal opinion written as the Council's Statement of Case. Unreasonable behaviour has occurred.
5. That said, the application for costs is framed around the adjournment and its cause. In this respect, the Council provided its legal submissions around four weeks before

- the hearing was due to open. These followed an earlier note from the Council which had set out the legal tests relating to s106A (and s106B) in accessible terms. The legal submissions were not clearly badged as such, and the author was not identified as a lawyer contrary to good practice, but they nevertheless clearly raised points of law and fell to be considered on their own merits. The Council did not sign post in advance their intention to be legally represented at the hearing, which again is not good practice, but they were not required to.
6. The applicant responded to the legal submissions twice before the hearing opened in some detail and with reference to legal authorities. It was during the hearing that they subsequently took the view they needed further legal advice.
 7. There were some additional points made at the hearing by the Council, such as the suggestion Mr Bray's expert evidence on viability should be given reduced weight because he was also advocating for the applicant on points of law. This understandably threw Mr Bray, who became hesitant to continue. The submission was also forcefully made. This was a factor in the appellant seeking an adjournment, but the Council did not act unreasonably in seeking clarification on Mr Bray's role or robustly pursuing its case.
 8. Ultimately, the main reason for the adjournment, as broadly recorded in my adjournment note, was that the appellant wished to seek legal advice on whether 'equally well' meant equivalent benefit. However, this was a core element of the Council's submissions made before the hearing opened. It is also relevant that the applicant requested the adjournment after the to and fro over the legal submissions seemed to be going against them. This was due to an inequality of arms, but not being legally represented was ultimately the applicant's choice.
 9. The suggestion that the Council's legal submissions were 'clearly wrong' is a difficult one to substantiate. They were made by a barrister with reference to the Act and properly referenced with legal authorities. Indeed, the passages in the case law referred to seems to support Dr Fowles's propositions. The Council were also able to provide an appeal decision that supported the arguments being made. This was after the second adjournment, but suggests the points made were at the very least arguable. The reference to the Subsidiary Control Act was novel, but the points were substantiated in writing. This matter was not discussed in any detail on the 23 October 2025 and was not a reason for the adjournment.
 10. Thus, the Council acted unreasonably in raising wholly new arguments, but it did raise these early in proceedings. This gave the appellant time to respond and they took that opportunity. It transpired at the hearing that they felt the need to seek an adjournment and instruct Counsel, but this is a decision they could have taken earlier. Had they done so then the adjournment would have been unnecessary. As such, the cause of the adjournment does not sit solely with the Council.

Conclusion

11. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not arisen and consequently an award of costs is not warranted.

Graham Chamberlain
INSPECTOR