



Costs Decisions

Site visit made on 9 March 2026

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 20 March 2026

Costs application in relation to Appeal A: Ref APP/W1905/C/24/3357949 14 Gaywood Avenue, Cheshunt, Hertfordshire EN8 8QD

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Elizabeth Ann Whittick for a full award of costs against Broxbourne Borough Council.
- The appeal was against an enforcement notice alleging without planning permission, the subdivision of the property to create two independent dwellings.

Costs application in relation to Appeal B: Ref APP/W1905/W/24/3357951 14 Gaywood Avenue, Cheshunt, Hertfordshire EN8 8QD

- 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 Mrs Elizabeth Whittick for a full award of costs against Broxbourne Borough Council.
- The appeal was against the refusal of planning permission for conversion of the existing single-family dwelling into two self-contained dwellings.

Decisions

1. The applications for costs are allowed in the terms set out below.

Procedural Matter

2. During the course of my determination of the appeals, and the associated costs applications, the Council informed me (in response to enquiries that I had made) that the Borough's Housing Delivery Test result was 57% at the time that the Council refused the planning application for the provision of housing. However, there was no reference to (or consideration of) that fact in either the Delegated Report (leading to the refusal of the application) or the Enforcement Report (leading to the issue of the enforcement notice).

Reasons

3. 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.
4. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.

5. The Council refused the planning application (and issued the subsequent enforcement notice¹) without taking into account the Housing Delivery Test result for the Borough. The National Planning Policy Framework (Framework) in place at the time required that decisions should apply a presumption of sustainable development in granting planning permission for applications involving the supply of housing where the Housing Delivery Test indicates a delivery of housing below 75% (unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole – the ‘tilted balance’). Clearly, with the Housing Delivery Test result being only 57% at the time, the application of the ‘tilted balance’ was an important material consideration which the Council failed to consider in its determination of the appeal scheme (and, upon which, it then took enforcement action). That constituted unreasonable behaviour.
6. Local planning authorities are entitled to, and indeed required by statute, to come to their own views on planning merits. However - it seems to me that, had the application been properly assessed under the Framework, it is likely that the ‘tilted balance’ would have operated towards the grant of permission. Consequently, there would have been no need for the appeals to have been made in the first place and the appellant has been put to unnecessary expense.
7. The applicant made alternative costs arguments, including one that was tied up with her appeal under ground (d) as regards the enforcement notice appeal. Those arguments do not succeed, particularly given my findings on that ground of appeal. However, the costs applications are allowed for the reasons I have set out in the paragraphs above.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that full awards of costs are justified in respect of both appeals.

Costs Orders

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Broxbourne Borough Council shall pay to Elizabeth Ann Whittick, the costs of the appeal proceedings (Appeals A and B) described in the headings of these decisions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Broxbourne Borough Council, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR

¹ for the same reasons of insufficient garden amenity space and parking provision.