Planning Inspectorate

Costs Decision

Hearing held on 10 March 2026

Site visit made on 10 March 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2026

Costs Application in relation to Appeal Ref: APP/C1760/C/25/3375182
Emer Farm, Green Lane, Ampfield, Romsey SO51 9BN

- 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 Mr Edward Godwin of Roe Buck Holdings Limited for a full award of costs against Test Valley Borough Council.
- The appeal was against an enforcement notice alleging the erection of a building.

Decision

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

The submission for the Applicant

2. The application is made on both substantive and procedural grounds in respect of the following counts of unreasonable behaviour: the nullity; failure to serve on relevant parties; and, failure to substantiate a case against the appeal's success under ground (a) or alternatively withdraw the enforcement notice.

3. Having regard to case law, the deficiencies of the notice are such that it should be considered a nullity. The defects in the notice are sufficiently significant and numerous that the notice should be considered a nullity and due to the failure to comply with the Habitats Regulations it would be unlawful to do otherwise. There has been improper service, actions contrary to the Habitats Regulations and failure to provide reasoned justification for the service of the notice itself. The wasted and unnecessary expense of this unreasonable behaviour is clear: the entirety of the pursuit of the appeal is wasted in the course of the Council's unnecessary service of the nullity, and its persistent defence of the same. The Council were invited to withdraw the notice but did not do so.

4. The failure to serve on landowners is a significant flaw and the Council failed to make appropriate enquiries to establish the facts necessary to serve a reliable notice. A reasonable standard of care was not exercised. The consequential wasted and unnecessary expense is the entirety of the appeal.

5. A case was then advanced by the Applicant that the building remains capable of performing an agricultural function, and an agricultural use does not require planning permission. To refuse planning permission to support an agricultural business would normally require very clear justification. Nevertheless, the Council put forward the opinion there would be conflict with Policy COM2 of the LP.

6. The entirety of the Council's enforcement case however appears predicated on harms associated with development not contained within the four corners of the

notice, being that of dwellings. This was unreasonable. Reference is also made to harm to the character of the countryside, but no such harm is alleged in the notice.

7. The Council also failed to engage with the evidence put forward showing how the agricultural use of the building could take place. The Council has referred to significant planning harm, but it is then not possible to mount a coherent argument against an allegation of harm if that harm is not identified or is vague and unsubstantiated.

8. The Council has then made no attempt to address material considerations under s38(6) of the Act, other than the development plan. The notice does not include justification for expediency. The Council has not provided evidence that the agricultural enterprise does not justify the accommodation proposed, and evidence of specific flood risk impacts is lacking. The Applicant is entitled to know the Council's case, and harms have not been presented.

9. The Council could have at any time withdrawn the notice but instead maintained vague and unsubstantiated assertions. The consequential unnecessary and wasted expense is that the Applicant has needlessly born costs in respect of the ground (a) appeal, which could have been avoided if the Council had behaved reasonably.

The response for the Council

10. In respect of nullity, there is no case to answer. The Council's statement, appendices, and oral evidence clearly identify why the notice was not a nullity.

11. In respect of failure to serve, the evidence is clear that the notice was served correctly.

12. The development would as a matter of fact result in conflict with COM2 of the LP. It is however a matter of planning judgement, and the findings of one party does make the other parties' behaviour unreasonable. The primacy of the development plan is a constant refrain in the NPPF.

13. It is clearly set out within the Council's appeal statement and oral evidence why the Council believe the development is not compliant and the justification for this. Furthermore, there are no material considerations which outweigh this harm.

14. The reasons for serving the notice are well founded and the Council in no way behaved unreasonably.

Inspector Reasons

15. 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.

16. The Council came under considerable pressure from the Applicant to withdraw the notice following its issue on 24 September 2025. The reasons for this were also pursued at appeal which largely necessitated the Hearing. I then did not find the notice to be a nullity or that it had not been properly served.

17. The reasons for issuing the notice are then adequately detailed and cite relevant development plan policies. It was clear there were three main issues, to which the

Applicant readily agreed my descriptions during the Hearing. It must therefore follow that they understood the reasons for the issuing of the notice and the Council's case.

18. The Council's case was in any event not vague or unsubstantiated and it responded adequately to the case and considerations made by the Applicant. It was for the Applicant to put forward the necessary evidence. The main issues were then not whether the building could perform an agricultural function, but whether there was an essential need, given policy considerations and the evidence from the Applicant. I also do not accept the Council's case was predicated on a residential use as reference is not made in the notice to residential use or indeed harm to the character of the countryside.

19. The Council also took steps in advance of the Hearing to try and facilitate resolution in respect of some other identified issues, meaning matters such as flood risk could very likely have been dealt with by suitably worded planning conditions and so only limited time was spent during the Hearing.

Conclusion

20. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Paul T Hocking

INSPECTOR