



Costs Decision

Inquiry held on 24 - 26 February 2026 and 3 March 2026

Site visit made on 25 February 2026

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2026

Costs application in relation to Appeal Ref: APP/C3810/W/25/3374471

Land south of Ancton Lane, Middleton-on-Sea, Bognor Regis PO22 6NB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Kinsted Developments LLP for a full award of costs against Arun District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of agricultural buildings and development of the site to provide 67 No. dwellings with supporting infrastructure, storage units, public open space, landscaping, sustainable urban drainage, car and cycle parking and associated works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 made their application in writing during the appeal. The Council submitted its response in writing ahead of the Inquiry. I gave each party the opportunity to make oral or written submissions at the Inquiry to reflect the evolution of evidence and the evidence given at the Inquiry. Neither took up that opportunity, so I have determined the application based on the written submissions.

The merits of the application

4. The applicant alleges that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is the applicant's contention that the planning application should have been granted, and the appeal would not therefore have been necessary.
5. While the Council is currently unable to demonstrate a five-year supply of deliverable housing sites as required by the National Planning Policy Framework (the Framework), that does not automatically mean that development proposals should be granted planning permission. The starting point in planning law is that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework was a material consideration in this case.
6. Planning permission was refused by the Planning Committee for nine reasons after considering their officer's report and recommendation to refuse planning

permission. The Planning Committee reached a different assessment on the degree of harm that would be caused to designated heritage assets and felt that future occupiers of the appeal site would be overly reliant on private car journeys. As a matter of principle, it is reasonable for Council officers to reach different assessments to the applicant and for members of the Planning Committee to reach their own assessment irrespective of their officers or the applicant's. The key in both situations is that the view is supported by substantive evidence.

Reason for refusal 6

7. Officers had explained to the Planning Committee that "the proposal, despite being within the countryside, is sustainably located as it adjoins with the defined Built Up Area Boundary, and it will be possible for residents to use non-car means of transport to access pubs, shops, and other facilities. There will be safe walking and cycling routes to the facilities of Middleton-on-Sea."
8. The Planning Committee disagreed with their officers, as they are entitled to do. But that must be backed up with reasons and evidence to support the stance being taken. The Minutes of the Planning Committee meeting confirm the decision that members took to add reason for refusal 6 to the list of reasons for refusal, but the minutes do not explain the reasons why members took that decision.
9. The applicant submitted an Active Travel Assessment (ATA) as part of its appeal submissions. Despite this, the Council reflected reason for refusal 6 in its Statement of Case (SoC) and said little else. Therefore, I requested a fuller explanation of the Council's case. This led to the Council withdrawing this reason for refusal after the matter was taken back before the Planning Committee.
10. It is not unreasonable for new material to be reviewed during an appeal, but the Planning Committee did not explain why it took the stance it did in refusing planning permission or in withdrawing the reason for refusal. On neither occasion is there a public record of the rationale for why the Planning Committee took the decision it did. Even though the applicant submitted the ATA, there was no suggestion that there had been a change of circumstances in respect of facilities and services in the area. Given this and members' local knowledge, the Council acted unreasonably in not substantiating its case on appeal and withdrawing its case after causing the applicant to incur unnecessary expense in preparing its evidence on this matter. The basis of the award relates to the work incurred by the applicant due to the Council's actions, not the dispute which continued with the Parish Council.

Reason for refusal 1

11. Appendices D to F to the applicant's SoC were submitted with the applicant's appeal. They amended the approach to off-site highway works to ensure that off-site protected trees were not harmed because of the proposal. Reason for refusal 1 outlined that "no definitive information has been put forward to properly determine the level of impact". Thus, given that the Council subsequently withdrew reason for refusal 1, it is reasonable to conclude that the Council was satisfied that the information submitted with the appeal provided the right level of detail.
12. I do not think the Council's concern could have been dealt with by imposing a planning condition because the amendments were undertaken following a more detailed tree survey in relation to an Oak tree on the southern side of Ancton Lane. The upshot of this was the proposed widening works opposite the site's entrance included the northern verge and ditch rather than the southern side, as previously

proposed. Changes were also made to widen the southern extent of the lane to the west of the site. Swept path analysis was also completed. The breadth of additional information indicates to me that it would not have been possible to draft a planning condition with sufficient precision to secure the changes that the applicant and the Council agree are required. Therefore, the Council acted reasonably in refusing planning permission for this reason and by responding to the amendments.

Reason for refusal 2

13. Being correct about a matter does not necessarily mean that the other party has acted unreasonably. The Council chose to defend this reason for refusal, and the matter was the subject of a roundtable session. The Council's Tree Officer submitted a Proof of Evidence setting out the Council's case on the matter.
14. The dispute was a difference of professional judgement. Both witnesses provided well-reasoned justification for their stance, and the Council substantiated its concerns. Moreover, both parties agreed that a planning condition would overcome the concerns raised about the cycle/bin store in plot 49. This was not a point made by either party, but as it did not change the Council's view on other aspects of the dispute, I consider the Council did not act unreasonably in refusing planning permission as it substantiated its case on appeal.

Reason for refusal 3

15. This reason for refusal contains two parts. The first was about where parts of the built development would be in relation to Flood Zones 2, 3a and 3b and future Flood Zone 3a in 2111. This was because Flood Zone mapping of the appeal site from the Strategic Flood Risk Assessment showed part of the site being affected by Flood Zone 3b. The accuracy of that mapping has nevertheless fluctuated due to correspondence with the Environment Agency, and due to a subsequent update to the Flood Zone mapping. Ultimately, however, the applicant and the Council engaged, reviewed the matter and agreed that the mapping insofar as Flood Zone 3b on the appeal site was erroneous. That work took place ahead of the Inquiry and avoided unnecessary work from taking place. It was a reasonable course of action that responded to the changing circumstances.
16. Even so, other parts of the appeal site around the proposed access were in Flood Zones 2 and 3. Further, more of the appeal site (including the proposed access and emergency access) is predicted to lie in Flood Zone 3a by 2111 due to a rise in sea levels. Hence, whether it be the current or future flood risk, some of the proposed built development would be located on an area of risk of flooding even though the dwellings would not be due to land raising. Correctly, a sequential test was needed, so the Council did not act unreasonably in considering one to be necessary.
17. The second part of the reason for refusal related to the sequential test submitted with the planning application. The Council determined that the area of search was too confined in relation to several sites being discounted for being too small or for having the same status as the appeal site in the Housing and Economic Land Availability Assessment. The Council's stance was justified and subsequently vindicated through the updated sequential test submitted with the Applicant's SoC. This broadened the area of search to the whole district and addressed the approach to sites being discounted.
18. The Council was only able to consider the updated information as part of the appeal, as it was not available any earlier. Thus, the Council did not act

unreasonably in refusing planning permission on this ground. It also promptly reviewed the information and concluded that the sequential test had been passed, which resulted in this reason for refusal being withdrawn. That was an appropriate and reasonable approach that saved unnecessary work as part of the appeal.

Reason for refusal 4

19. The Council determined the planning application on 26 March 2025. Although West Sussex County Council (WSCC) did not raise objection to the proposal subject to planning conditions in respect of drainage, the Council's drainage officer objected for several reasons. Those were listed in the Original Officer Report and formed the basis of the Council's reason for refusal around the lack of sufficient information. The Council explained that, in reaching its decision, it did not consider the applicant's submissions on 25 March 2025, as they came too late to properly consider them before the Planning Committee. The Council acted reasonably given the timeframe involved. In any event, this was not the only reason for refusal, and the Council had explained that the flood risk harm amounted to a strong reason for refusal. Therefore, the decision was reached in accordance with Framework paragraph 11 d) i, not part ii of that paragraph. Hence, the outcome would not have been any different, and an appeal would not have been avoided entirely.
20. At appeal, the Council engaged with the applicant's drainage information and reviewed its case, thereby avoiding unnecessary work as part of the appeal. That was reasonable behaviour, and the Council's actions have not caused the applicant to incur any unnecessary or wasted expense in the appeal process as a result.

Reason for refusal 5

21. Both parties agreed that the proposal would conflict with the relevant development plan policy on this issue. It was also common ground that this matter needed to be weighed in the planning balance, a point that the reason for refusal makes clear as it says that "the harm identified, in combination with other issues, clearly and demonstrably outweighs the benefits of the application...". As such, the Council's decision and case were not predicated on the basis that the loss of high value agricultural land was a matter that would significantly and demonstrably outweigh the scheme's benefits on its own. The Council maintained this position, and while other inputs into the planning balance changed, the Council was entitled to exercise its planning judgement on the tilted balance, and thus, it substantiated its case. Hence, no unreasonable behaviour occurred in respect of this reason for refusal.

Reason for refusal 7

22. The Planning Committee considered that the proposal would cause a higher level of harm to the designated heritage assets than their officer's. That was a matter of judgement, a requirement of their role. Even so, the Planning Committee later reconsidered the degree of harm that they considered the proposal would cause. While the category of harm changed, and no explanation was provided by the Council as to why it reverted to less than substantial harm rather than substantial harm, it changed very little in terms of the appeal, as evidence still needed to be produced in respect of the dispute and so that I had all the relevant information to discharge my statutory duty. But, even if the Planning Committee had adopted its officer's recommendations on heritage assets, an appeal would still have arisen given the Council's stance on flood risk. Given this, the applicant did not incur unnecessary or wasted expense in the appeal process, as they would have needed to produce the evidence anyway.

Reasons for refusal 8 and 9

23. Both reasons for refusal came about because of the Council's stance on the other seven reasons for refusal. Although the applicant intended to enter into a legal agreement with the Council and WSCC, this does not alter the Council's view on the other seven reasons for refusal. The Council's approach is common practice in the absence of an executed legal agreement which ensured that the scheme complied with the relevant development plan policies. In the absence of such an agreement, policy conflict arose, albeit a technical conflict given the applicant's intention. No unreasonable behaviour arose here, and the parties have worked constructively together as part of the appeal to secure the requested obligations.

Conclusion

24. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reason for refusal 6 (Council actions only), and a partial award of costs is therefore warranted. However, as I have explained, no unreasonable behaviour occurred in respect of the other aspects of the application, and therefore no unnecessary or wasted expense was incurred on those matters.

Costs Order

25. 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 Arun District Council shall pay to Kinsted Developments LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of reason for refusal 6 (Council actions only); such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Arun District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR