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## Costs Decision

Site visit made on 17 March 2026

**by A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 24 April 2026**

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### **Costs application in relation to Appeal Ref: APP/N4720/X/25/3367801**

#### **Land at Burras Drive, Otley LS21 3ET**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 ("the 1990 Act") and the Local Government Act 1972, section 250(5).
  - The application is made by Mr M Brooke of Bankhead Group for a full award of costs against Leeds City Council.
  - The appeal was against the refusal of a certificate of lawful use or development ("LDC") for the maintenance and improvement of existing private way.
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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 asserts that the Council failed to substantiate their reasons for refusal; had no regard to or misinterpreted the defined terms in the Town and Country Planning (General Permitted Development) (England) Order 1995 ("the GPDO") and the definitions in the Highways Act 1980 and the New Roads and Street Works Act 1991, particularly the definition of a private way; and failed to follow established case law in respect of the Council's second reason for refusal.
4. In response, the Council state that they considered the proposed works against the provisions of the GPDO and concluded that the works would not constitute permitted development. They contend that the GPDO requires a degree of interpretation to reach a view as to whether the engineering works are permitted development. The delegation report and appeal statement clearly lay out the reasoning for the Council's view and decision which was reached in discussion with the Council's legal officer. While the applicant may not agree with this interpretation and decision, given this has been substantiated in reaching the decision to refuse the granting of the LDC, the Council has not acted unreasonably.
5. The Council's officer report and reasons for refusal are complete, precise, specific, relevant and provide sufficient evidence to support their case. They also clearly state which parts of the GPDO the proposal would be contrary to. Furthermore, the Council were reasonable in concluding that the proposal would not comprise maintenance and improvement, as following consideration of the appeal on its merits alone, I concurred with the Council on this matter.

6. The Council do not refer to the definition of a “*private way*” included within Article 2 of the GPDO, despite it being included within the applicant’s covering letter submitted with their application. Furthermore, the Council do not refer to the interpretation of Class E, Part 9, Schedule 2 of the GPDO that directs the reader to the Highways Act 1980. Instead, the Council refer to an uncited “*simple definition of a private way*” which included such terms as “*allows someone to travel over someone else’s property*” and “*for public use*”. This definition differs from the definitions within the GPDO and the Highways Act 1980.
7. The Council’s failure to apply the definitions contained within the GPDO led to the Council incorrectly refusing the LDC based on there being “*no public or permissive access to or through the site*”. This, in my judgement, amounts to unreasonable behaviour. However, this forms only one part of the Council’s first reason for refusal. Therefore, it would still have been necessary for the appellant to defend the remaining aspects of this reason for refusal. Consequently, the Council’s unreasonable behaviour did not lead to unnecessary or wasted expense in the appeal process.
8. Furthermore, the Council were not unreasonable in coming to their decision that the appeal site did not comprise a private way, as following consideration of the appeal on its merits alone, I have concurred with the Council.
9. The evidence before me indicates that the applicant did not refer to any Case Law within their LDC application to the Council. A Council cannot be required to know every case and its relevance to a particular application. Therefore, I do not accept that the Council should have taken Case Law into consideration when determining the LDC.
10. Even if the Council had taken the case of *Cowan v Secretary of State for the Environment & Another* [2000] 79 P & CR 457 into consideration, the Court established that whether something amounts to maintenance or improvement is a matter of fact and degree for the decision maker. Consequently, the Council were not unreasonable in concluding that the proposal would not amount to maintenance or improvement, particularly as I have concurred with the Council on this matter. Consequently, an appeal would have still been necessary.

## **Conclusion**

11. For the reasons given above, I find that unreasonable behaviour by the local planning authority, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*A Berry*

INSPECTOR