
Costs Decision

Site visit made on 9 December 2025

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2026

Costs application in relation to Appeal Ref: APP/Y9507/D/24/3355303

Land at Mulberry Cottage, 3 Combe Hill Close, Rogate, West Sussex, GU31 5DS

- 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 Mr Tony Scopes-Upton for a full award of costs against South Downs National Park Authority.
 - The appeal was against the refusal of planning permission for the construction of a detached outbuilding to provide a gym, changing facilities, plant room and pool room, formation of a swimming pool/ decking and replacement retaining wall.
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Decision

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

The Application and the Council's Response

2. The costs application, the Council's response and the appellant's final reply were all submitted in writing and will be familiar to the parties. Consequently, the following is a brief summary of the submissions.

The Costs Application

3. The Council behaved unreasonably in respect of the retaining wall in requiring a planning application when it was clear that the works were a rebuild of a previous structure.
4. The Council also misapplied facts and policies and used criteria not applicable to the development, particularly in respect of Policy SD31 of the South Downs Local Plan. It also made statements regarding historical tree clearance and works to the property that had nothing to do with the application in question. Claims that the site is prominent in the public domain are unsubstantiated.
5. In terms of water neutrality, the Council treated the application differently than other similar proposals in the area and the length of time taken to deal with the application was unreasonable. During that time no opportunity for discussions or amendments was given.

The Council's Reply

6. The appellant's claim is unsubstantiated and the Council considers that the application was given full and proper consideration.
7. In terms of the retaining wall, the appellant put that forward as part of the application. Furthermore, the wall forms part of the proposed outbuilding and the two were assessed holistically.

8. All of the policies referred to in the reasons for refusal were relevant to the application and related to the harm identified by the Council. The issue of Water Neutrality was complex and the application was one of the first of its kind to be submitted. Consequently, further information was required and it is considered that the time taken to determine the application was reasonable.
9. In terms of consistency of approach, each application must be considered on its merits. The approach to water neutrality was evolving and the approach in 2022 may well differ from the way the Council would approach it in 2024. However, the Council made the correct assessment on the basis of the information available at the time.

Reasons

10. 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.
11. As is often the case with cases where enforcement action has been taken there is a tendency for battle lines to be drawn and respective positions to become entrenched. It appears to me that is largely the case here and the differences between the parties are largely over judgements relating to the impact of the scheme.
12. Subject to appropriate conditions I was satisfied that the development was acceptable in planning terms but that does not entail that the Council behaved unreasonably in refusing the application. The site is in a sensitive location within the South Downs National Park and the Council assessed all material considerations thoroughly.
13. The planning policies referred to were all relevant to the development, including Policy SD31. The Council accepted that the works would not lead to the loss of a small to medium sized dwelling but the principle regarding extensions being proportionate, in the interests of the character and appearance of the area was still relevant. Thus, it was not unreasonable for the Council to refer to it. The precise calculations were a matter of judgement as to what should or should not be included.
14. The Officer Report did contain a commentary about historical tree clearance dating back to 2007 and previous works which were not related to the application in question. That was somewhat unusual. There is no suggestion any of the trees were protected and it is not clear why the removal of trees stretching back to well before the current appellants owned the property or previous alterations to the home should have had any bearing on the determination of the application in question.
15. Notwithstanding the above, the report primarily focussed on the relevant material considerations and the overall conclusion was not unduly influenced by the comments about previous works.
16. If the appellant wished to ascertain whether the reconstruction of the retaining wall would have been lawful he could have applied for a Certificate of Lawful Development under s192 of the Town and Country Planning Act 1990. As it was,

the wall formed part of the application, as submitted, and the Council was well within its rights to determine it as part of the proposal and assess its impact accordingly. Moreover, I was not satisfied in any event that the wall would have amounted to 'permitted development' and I see no fault in how the Council handled the matter.

17. The issue of water neutrality was clearly an evolving issue at the time the Council was determining the application and the caution in dealing with the matter was understandable given the way in which the Habitat Regulations are framed. It took a long time to reach a resolution but the appellant could have appealed against non-determination after an 8 week period had he wished to do so.
18. From the information presented the Council focussed properly on the impact of the development in question. If there was any inconsistency in how they dealt with other similar proposals I am satisfied that can be attributed to the evolving guidance in relation to the matter as opposed to any mishandling of the application.
19. Overall, the refusal of the application came down to a difference of opinion on the level of harm that would be caused having assessed the relevant considerations. The matter was a balanced judgement and although I sided with the appellant's view that does not dictate that the Council's assessment was unreasonable. It was not a case that should have "clearly been permitted" having regard to paragraph 049 of the Government's Planning Practice Guidance but required a balanced view.
20. Accordingly, I find no evidence of unreasonable behaviour on the part of the Council. In the absence of any unreasonable behaviour there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR