
Costs Decision

Site visit made on 7 April 2026

by **C Housden BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th May 2026

Costs application in relation to Appeal Ref: APP/C1435/W/25/3377076

Land east of Tanyard Cottage, Newick Lane, Heathfield, East Sussex TN21 8PT

- 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 Paul Ferguson for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of permission in principle for the siting of five to nine dwellings with a combined floor space less than 1,000m².
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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 case for the applicant is on the basis the Council misapplied the permission in principle regime, relying on unsupported assertions of harm whilst failing to correctly apply national policy and consider material considerations.

Character and appearance and siting of the development

4. In relation to matters of character and appearance, including the effect on the High Weald National Landscape (HWNL) and setting of the Grade II listed building North Down the applicant sets out that the Council's assessment breached the scope of the permission in principle (PIP) regime by assuming massing, orientation, visibility, scale, form and visual mitigation.
5. Whilst at the PIP stage, there is still an inherent amount of built form associated with a residential land use for the amount of development between five to nine dwellings that should be considered. It is reasonable to consider that in principle, the development would result in built form on what is presently a green field.
6. It is clear from its evidence that the Council does not undertake such detailed analysis as purported by the applicant. The evidence clearly shows the harm underpinning the reason for refusal relating to matters of character and appearance is based on broad in principle effects limited to location, land use, and amount, rather than detailed design matters.

7. The Council clearly, and accurately take into account the existing situation, including the surrounding development, and reaches a reasonable and substantiated conclusion on the adverse effect resulting from the principle of such a development on the character and appearance of the area, including on the HWNL and the setting of North Down. The element of the reason for refusal based on character and appearance is not vague, generalised or inaccurate and is reflective of the facts of the case and does not stray into matters of technical detail. Therefore, no unreasonable behaviour as described in the PPG has been demonstrated in this regard.

Heritage evidence

8. The applicant contends that the heritage element of the refusal is not supported by professional heritage evidence to support the purported harm identified by the Council.
9. However, the Council has produced an officer report and statement of case written by its professional officers which accurately describes the significance of the asset and provides an assessment of the effect of the proposal on its setting. In particular, based on my observations, and indeed the applicants own Heritage Impact Assessment (HIA), it was reasonable for the Council to consider the appeal site to be a field with historic ties to and forming part of the setting of the listed building.
10. Furthermore, the applicant sets out “the Council did not acknowledge that modern development has removed any functional or visual link between the appeal land and the listed building”¹. However, this is not an accurate interpretation of the applicants own HIA which describes the connection as “loosened”², not removed. The statement is also not reflective of the assessment of the Council which does indeed acknowledge such modern development³ situated within the setting. In addition, the Council does not make design dependent assumptions on the effect on the setting of the heritage asset as purported by the applicant.
11. Therefore, the Council has adequately substantiated this element of its reason for refusal and has not relied upon vague or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis. No unreasonable behaviour as described in the PPG has therefore occurred.

Accessibility to services and facilities

12. In assessing the principle of the lack of connectivity from the appeal site to facilities and services owing to its location, it was reasonable of the Council to consider known material considerations such as land ownership matters which could fundamentally undermine the principle of delivering such required improvements or connections. Whilst I have not reached the same conclusion as the Council based on the evidence before me, this is a matter of planning judgement, which has been adequately substantiated by the Council for the reason it took its view. The Council has therefore not behaved unreasonably in this regard.

¹ Page 5 of the applicant’s Costs application

² Paragraphs 3.11, 3.13 and 5.2 of the HIA.

³ Page 12 of the Council’s officer report.

Application of National Policy

13. The applicant contends that the Council should not have disengaged the presumption in favour of sustainable development as outlined at paragraph 11d) of the National Planning Policy Framework (the Framework), on the basis that they did not undertake the assessment at paragraph 190 of the Framework.
14. The provisions of paragraph 190 would only apply if the Council considered the development to be major development within the National Landscape. The Council has confirmed that it does not consider this to be the case, a position I agree with, as set out in my decision. Paragraph 190 is therefore not relevant to the appeal scheme as it is not a major development. The Council has not behaved unreasonably by not engaging with the tests contained within it.
15. Harm resulting from non-major development within a national landscape or to a designated heritage asset can still amount to a strong reason for refusing the development, thereby disengaging the presumption in favour of sustainable development. The Council has adequately substantiated why they consider this to be the case. The Council has not misapplied national policy and has adequately substantiated their reason for refusal. It has therefore not behaved unreasonably in this regard.

Failing to consider/departing from material considerations

16. The applicant considers the refusal to be contradictory given the officer report refers to the site as not being isolated, whilst the decision notice refers to the site as being situated within open countryside.
17. However, it is clear from the evidence that the reference to open countryside in the decision notice is stated in the context of the Council's spatial development plan policies. The appeal site is situated outside of these boundaries defined by policy and is therefore within open countryside for these purposes. When referring to the site not being isolated, this is in reference to its relative proximity to the edge of Heathfield. Both statements are accurate and therefore the Council has not behaved unreasonably.
18. In addition, whilst the Council has granted planning permission at Heatherlea and Rother View under the same planning policies, it has been adequately explained the differences between these proposals and the appeal scheme. Notably in both these cases, the sites already had existing development on them. I therefore do not consider that the Council has failed to determine similar cases in a consistent manner. Therefore, no unreasonable behaviour has occurred in this regard.

Conclusion

19. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Housden

INSPECTOR