



Costs Decision

Site visit made on 9 June 2026

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 12th June 2026

Costs application in relation to Appeal B Ref: APP/C3620/X/25/3375575 Stonehouse, Broomehall Road, Coldharbour, Dorking, Surrey, RH5 6HF

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs J Reader for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for erection of a single storey outbuilding.
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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 Appellant argues that the Council were fundamentally misled by relying on a flawed idea of the relationship between engineering works and development. The Council respond that they were well aware that Class E of the GPDO allowed excavations for the provision of swimming pools, but that this is limited to 3500 litres. The works to create the class E garden building would be substantial and beyond the scope of permitted development.
4. Ordinarily, I would be reluctant to award costs where subjective judgements are involved, for example in this appeal, where a large amount of excavation is involved, it could be considered to be outside the scope of permitted development rights granted by Class E. But the Council seemed to have made two errors in their reasoning. Firstly, they relied on *Parkes*¹ to draw the conclusion that engineering works are outside the scope of permitted development. That is not the issue in *Parkes* which involved a discussion on the correct definition of a use as opposed to operational development. The Council recognised that development involved several components, one of which was engineering works but then concluded that engineering works were not permitted by the GPDO. This is factually incorrect – as the construction of a swimming pool allowed by Class E refers. There is no analysis by the Council of the quantum of excavation or any reference to the *Eatherley*² case which bears directly on this subject. The Officer's report does

¹ *Parkes v SSE and Another, CoA* [1978]

² *Eatherley v Camden LBC & James Ireland JPL* 2017

seem to conclude that any engineering works that affect the profile of the land fall outside the scope of the GPDO, and this is incorrect.

5. It could be argued that nevertheless, it was a subjective judgement they were entitled to make that the excavations were so substantial that they went beyond what was considered reasonable by Class E, whether they referenced Eatherley or not. However, their second mistake was the assumption that Class E allowed a maximum excavation of 3500 litres for swimming pools. This is a relatively tiny 3.5 cubic metres. In fact Class E is clear that the 3500 litre limit refers only to containers.
6. Class E concerns “*the provision within the curtilage of the dwellinghouse of— (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas*”. It goes on to describe development that is not permitted. Sometimes this refers to any part of the “*building, enclosure, pool or container...*”, sometimes just the building, but at E1(j) it says “*the capacity of the container would exceed 3,500 litres*”. There is no mention of pools so this restriction must refer only to containers mentioned in E(b) quoted above. There is no justification to assume there is a blanket prohibition on excavations over 3500 litres.
7. Given these two errors it seems the Council were fundamentally misled in their analysis of the Class E garden building proposed. Had they approached the application understanding that excavations were a part and parcel of the development permitted by Class E, and there was not a 3500 litre limit on what was reasonable, their representations would have been considerably different. Indeed they may well have come to the same view that I did.
8. Consequently, while I cannot say the Council would have granted the LDC, the appellant was put to the expense of dealing with a series of flawed arguments by the Council which in effect amounted to the entirety of Appeal B. A full award of costs for Appeal B is therefore justified.

Costs Order

9. 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 Mole Valley District Council shall pay to Mr & Mrs James Reader the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mole Valley DC to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

INSPECTOR