



Costs Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2026

Costs application in relation to Appeal Ref: APP/V2255/W/25/3376221

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR

- 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 Aspire LPP for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for an Outline Application (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation.
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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's concerns relate to the Council's second reason for refusal concerning ecology, priority habitat and protected species. The applicant argues that the Council acted unreasonably by pursuing this reason despite the advice of its officers and Kent County Council (KCC) Ecology, who raised no objection subject to mitigation and conditions. The applicant also states that the Council failed to identify which protected species impacts remained in dispute, failed to substantiate those concerns with objective evidence, and caused the applicant to incur unnecessary expense in preparing additional ecological evidence and securing expert attendance at the hearing.
4. The Council states that members of the Planning Committee were entitled to depart from officer and consultee advice and that genuine ecological concerns remained regarding the loss of traditional orchard habitat, effects on Borden Nature Reserve, biodiversity impacts and mitigation. The Council also points to additional ecological material submitted during the appeal process, including revised biodiversity net gain figures and habitat assessment work.
5. Members are entitled to depart from officer and consultee advice, provided their conclusions are capable of being supported by appropriate evidence. The fact that officers recommended approval, and that KCC Ecology did not object subject to conditions, does not in itself demonstrate unreasonable behaviour. Nor does the fact that the appeal has succeeded.

6. The applicant argues that the Council failed to properly substantiate its reasons for refusal and failed to adequately undertake the balancing exercise required by paragraph 11d) of the Framework. I acknowledge that the Committee's reasoning, particularly in relation to the protected species component of the ecology reason, lacked precision and could have been more clearly articulated. However, the Committee report clearly identified the housing land supply position, the tilted balance, the officer recommendation, and the principal benefits and harms associated with the proposal. Members were therefore aware of the relevant policy considerations before reaching a different planning judgement.
7. The Council had legitimate planning concerns regarding the loss of traditional orchard habitat, ecological effects on Borden Nature Reserve, habitat replacement, biodiversity impacts and mitigation. Those matters formed part of a genuine planning dispute, notwithstanding that I have ultimately reached a different conclusion in the appeal decision.
8. However, the protected species element of the second reason for refusal was expressed in broad terms and was not refined with sufficient precision during the appeal process. The Council did not clearly identify which specific protected species impacts remained unacceptable, nor did it provide detailed technical evidence directly contradicting the appellant's ecological surveys. Greater precision through the Statement of Common Ground and appeal process would have assisted in narrowing the dispute.
9. Nevertheless, the protected species concerns were closely linked to the wider ecological issues which remained genuinely disputed throughout the appeal, including habitat loss, biodiversity impacts and effects on the adjacent nature reserve. Furthermore, some of the additional ecological work undertaken by the applicant related to revised habitat and biodiversity net gain assessment work, rather than solely to protected species matters. Whilst updated ecological evidence was prepared and an ecological consultant attended the hearing, given that wider ecological matters remained in dispute, I am not persuaded that those associated costs arose solely, or even primarily, from unreasonable behaviour on the part of the Council.
10. Whilst the Council could have articulated and narrowed the protected species component of its case more clearly, I do not find that its conduct, viewed in the context of the wider ecological dispute, reached the threshold of unreasonable behaviour as described within the Planning Practice Guidance. Nor am I satisfied that unnecessary or wasted expense has been demonstrated.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Thomas Courtney

INSPECTOR