



Costs Decision

Inquiry held on 14-16, 21-22, 28 and 30 July 2026

Site visits made on 13, 16 and 29 July 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2026

Costs application in relation to Appeal Ref: APP/M3645/C/26/3378115

Land at Whyteleafe House, 439-445 Godstone Road, Whyteleafe, CR3 0BL

- The application is made under the Town and Country Planning Act 1990 (as amended) (the Act), sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Vilmex Limited for a partial award of costs against Tandridge District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the erection of a building comprising 167 flats including associated car parking, landscaping, communal, office, storage and leisure facilities.
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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 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 costs application and responses were made in writing and are therefore matters of public record. I will not rehearse the full submissions made by the parties.
4. The timetable for the submission of appeal documents was set out and agreed at the Case Management Conference (CMC) some time in advance of the deadline for the submission of proofs of evidence. I confirmed at the CMC and in the Post-CMC note that a main issue in the appeal under ground (a) was whether the development includes acceptable affordable housing, which had been raised in the Council's Statement of Case.
5. The Council did not submit a proof of evidence dealing with affordable housing matters. Instead, it introduced evidence from Mr Lee at rebuttal stage following Mr Brown's proof of evidence on behalf of the appellant. Although presented as rebuttal evidence, substantial parts of Mr Lee's evidence did more than respond to or identify alleged shortcomings in Mr Brown's evidence. It advanced new evidence and a different basis for calculating the affordable housing commuted sum. In the interests of fairness, I therefore allowed the appellant to submit further evidence from Mr Brown in response to the new evidence only, shortly before the inquiry opened.
6. The new matters in Mr Lee's rebuttal amounted to fresh and substantial evidence introduced at a late stage. In my judgment, the manner and timing of its introduction

- required Mr Brown to prepare a rebuttal that would not otherwise have been necessary, seeing as the Council did not submit a proof of evidence on affordable housing matters in accordance with the appeal timetable. The later agreement between the parties on affordable housing matters does not alter the fact that this additional preparatory expense had already been incurred.
7. The notice did not refer to affordable housing matters within the stated reasons for it being issued, but this did not prevent the Council from raising them in its Statement of Case. The reasons stated in the notice are to explain why the Council found it expedient to issue the notice at that time, rather than why planning permission should not be granted for the breach if an appeal is lodged under ground (a). Although withdrawing a stated reason for issuing a notice may, depending on the circumstances, amount to unreasonable behaviour, it does not follow that raising an additional planning consideration in response to a ground (a) appeal is necessarily unreasonable.
 8. Furthermore, there is a significant difference between the introduction of new reasons for refusing planning permission in an appeal under section 78 of the Act compared to additional concerns being raised in an enforcement notice appeal Statement of Case after an appeal has been lodged on ground (a). The issuing of an enforcement notice should not be delayed by a local planning authority having to compile an extensive list of all the reasons why planning permission should not be granted for the breach, rather than why it is considered expedient to issue the notice. Time is often of the essence when an enforcement notice is being drafted and an appeal on ground (a) may never materialise.
 9. The notice did not refer to any concerns in respect of the effect of the development on the living conditions of any neighbours with regard to daylight and sunlight either. However, neighbouring residents raised these concerns in their written responses to the appeal consultation. Based on the information before it, the Council supported those concerns, believing the development to be up to 3 metres taller than the approved scheme. Even if the Council had not supported those concerns, I would have raised them as a relevant point to be addressed, and as such the appellant was always going to need to deal with those neighbours' claims.
 10. The Council's case on daylight and sunlight matters in respect of neighbouring residents was not ultimately sustained in full at the roundtable discussion, but that was only after witnesses had shared evidence and engaged in discussions, and after I had tested the evidence of both parties. The Council did not lack a reasonable evidential basis for pursuing the matter. Nor am I satisfied that the appellant has demonstrated that the costs claimed in respect of its daylight and sunlight evidence were distinct from the work reasonably required to address the residents' representations and the effect of the development on neighbouring residents. Consequently, I find no unreasonable behaviour leading to unnecessary or wasted expense in the appeal process in this regard.
 11. The Council's case in respect of alleged deliberate concealment was not without merit and reflected the relevant case law. It is possible that acts of omission or documentary concealment can amount to positive deception in matters integral to the planning process, and if the appellant engaged in such acts to delay the Council's formal enforcement action as claimed, it could have benefited from that deception. This would have remained the case even if the Council should have been aware of the breach and was in a position to take the same formal

enforcement action well within 4 years of substantial completion. I have found that the appellant did not engage in such acts, but it was not unreasonable for the Council to pursue these arguments as it did, claiming it was given the impression that a previous planning permission was being implemented.

12. I therefore find that the Council acted unreasonably by introducing fresh and substantial affordable housing evidence for the first time at rebuttal stage. The appellant had to respond to the new parts of that evidence days before the Inquiry opened, when no rebuttal should have been necessary as the Council did not submit a proof of evidence in accordance with the appeal timetable. The appellant therefore incurred unnecessary expense in the appeal process in having to address the new late evidence.
13. The Council did not act unreasonably in any of the other respects, as claimed by the appellant. A partial award of costs is therefore warranted in respect of the reasonable costs incurred by the appellant in producing and submitting its rebuttal on affordable housing matters only.

Costs Order

14. 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 Tandridge District Council shall pay to Vilmex Limited the costs of the appeal proceedings described in the heading of this decision, limited to those reasonable costs incurred in producing and submitting the Financial Viability and Affordable Housing Rebuttal of James R Brown dated 10 July 2026; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Tandridge District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR