



Costs Decision

Hearing held on 11 August 2026

Site visit made on 11 August 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 03 September 2026

Costs application in relation to Appeal Ref: APP/F1040/W/26/3378441 Land to the South of Woodville Road, Swadlincote, DE12 6LY

- 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 Sean Rogers for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for change of use of land to form a 3 pitch family Gypsy and Traveller site and creation of new access road.
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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 submits that the local planning authority have acted unreasonably and failed to approve a sustainable form of development that complies with the National Planning Policy Framework. In particular, and having regard to PPG¹, three areas are highlighted which he believes represent unreasonable behaviour that have directly resulted in an unnecessary appeal:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.

¹ Paragraph: 049 Reference ID: 16-049-20140306

4. The local planning authority's (LPA) decision to refuse the planning application set out five reasons for refusal. I shall consider each of those in turn.

Refusal Reason 1 - Coal Mining Legacy Works

5. The application for planning permission was accompanied by a Coal Mining Risk Assessment having regard to the site's location within the Mining Remediation Authority's (MRA) Development High Risk Area. In response to a consultation on the planning application, the MRA raised a substantive objection, in particular raising concerns about the day rooms, which do not sit within the parameters of their Exception Criteria and they thus requested further information.
6. In response, after firstly seeking to have this matter dealt with by condition and subsequently having accepted that a condition would not provide suitable mitigation, the appellant decided to remove the day rooms from the planning application. He understood from the MRA that removal of the day rooms would resolve their concerns, as the proposed development without the day rooms would meet their Exception Criteria. Revised plans were produced and submitted to the LPA, and a revised description was agreed with the LPA and published on their website.
7. It is understood that on receipt of the revised plans, LPA Officers contacted the MRA and were advised that although they had not been formally consulted on any amended plans, it was their opinion that risks to public safety would have been removed by the removal of the day rooms. Thus, the removal of day rooms from the scheme would enable the MRA to remove their objection. Officers verbally reported the updated position to Members at the Planning Committee Meeting, who concluded that given the potential risks arising from the known mining legacy of the site and surroundings, then in the absence of a formal review of the revised plans and formal consultation response from the MRA they were unable to conclude the issues had been addressed. For that reason, the Council's first reason for refusal stated that *"the information submitted with the planning application did not include adequate site investigation details...."*
8. I appreciate that the decision to remove the day rooms and the revised plans were submitted after the Committee Report was finalised. However, Officers were able to provide a verbal position to the Member's after liaising with the MRA. Moreover, having accepted Member's decision that they required greater clarity and a formal response from the MRA, the Council did not seek to carryout a formal consultation on the revised plans, which would have been prudent once the appeal had been lodged. Indeed, despite receiving further evidence from the MRA, in the form of email correspondence to the appellant dated 27 July 2026, it was not until the matter was discussed at the Hearing that the LPA Officer accepted that the proposed development was not in conflict with Policy SD4 of LP Part 1, nor the National Planning Policy Framework.
9. The Council persisted with an objection to the development throughout the appeal process which, given the evidence before them, could have been avoided. Consequently, the appellant incurred unnecessary and wasted expense defending a reason for refusal in relation to risks from coal mining legacy works.

Refusal Reason 2 - Contamination

10. The LPA refusal reason 2 states that the application was not supported by a required geoenvironmental survey to demonstrate that imported fill and other waste materials are not contaminated. During the application process, a Phase 1 desk study was prepared and submitted to support the planning application. The Report identified a low potential risk of contamination from asbestos containing materials in made ground soils. Having regard to proposed residential use of the site the Report recommended a Phase 2 intrusive investigation to establish if contaminants are present in the soils and, if so, to inform a remediation strategy.
11. It can be seen from my decision that I found that considering the potential low risk and nature of the identified contaminants in the Phase 1 desk study, if found the contaminants could be the subject of remediation, and the required Phase 2 Report could reasonably be the subject of a planning condition. Indeed, the Council suggested a suitable condition that could be imposed if I were minded to allow the appeal.
12. The PPG advises that the LPA are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by refusing planning permission on a planning ground capable of being dealt with by conditions². Consequently, the appellant incurred unnecessary and wasted expense defending a reason for refusal in relation to potential risks from contamination, when that matter could reasonably have been dealt with by a condition.

Refusal Reason 3 – River Mease Special Area of Conservation (SAC)

13. Refusal reason 3 related to the effect of the development on the River Mease SAC. It was the Council's view that from the information submitted with the application, they were unable to determine that the development would not have a harmful effect on the integrity of the SAC.
14. It can be seen from my decision that I found that the development would have a harmful effect on the integrity of the SAC, with particular regard to nutrient neutrality. Whilst the appellant had suggested a number of drainage options, none of those options were supported by sufficient information to enable the LPA, and subsequently myself on appeal, to determine that the adverse impacts identified would be suitably mitigated.
15. The Council supported this reason for refusal on appeal with a statement of case. It was also clear from their decision and appeal response, which legislation and development plan policies the proposal is in conflict with.
16. For the reasons set out above, I am satisfied that the Council did not behave unreasonably with regard to this matter on appeal and the appeal could not therefore have been avoided.

² PPG: Paragraph :049 Reference ID:16-049-20140306

Refusal Reason 4 - Biodiversity

17. It was the LPA case that the development would result in a loss of onsite habitat and the supporting information was insufficient to demonstrate how 10% biodiversity net gain would be achieved.
18. It had been the LPA's view that the original planning application was not a retrospective planning application such that the statutory framework for biodiversity should be applied³. They were also concerned that whilst the appellant had demonstrated that there had clearly been a degradation of habitats resultant of the unauthorised development, the appellant had not demonstrated how that loss could be compensated for and enhancements secured.
19. It can be seen from my decision that I concluded that the application was at least in part retrospective, and the statutory framework did not therefore apply. However, whilst the appellant had carried out a Biodiversity Net Gain Assessment which demonstrated a loss of habitat, he did not submit a landscaping/biodiversity scheme to demonstrate how losses in biodiversity could be compensated for. Furthermore, the Council's refusal reason 4 was complete, precise, specific and relevant to the application. It also clearly states the policies of the South Derbyshire Local Plan, Part 1 that the proposal would conflict with, as well as citing conflict with the National Planning Policy Framework.
20. Whilst I found that had I been minded to allow the appeal, then it would have been reasonable and necessary to impose a condition to ensure that the development would not result in any overall loss of biodiversity value and that enhancements could be secured, that decision was a matter of judgement. I am satisfied, for the reasons given above, that the Council adequately substantiated its reasons for refusal, taking into account the development plan, national policy and material considerations, and were clear about the impact of the proposed development with regard to matters relating to biodiversity.
21. I therefore conclude unreasonable behaviour resulting in unnecessary expense during the appeal process, in relation to refusal reason 4 has not been demonstrated, and an award of costs in respect of this reason for refusal is therefore not justified.

Refusal Reason 5 – Public Right of Way 31, Overseal (PROW)

22. The LPA's fifth reason for refusal states that the development would obstruct the route of PROW. It goes on to say that whilst a diversion route has been proposed this relies on third party land. It states that the site layout therefore fails to protect the PROW and therefore conflicts with the development plan. However, prior to the Council determining the application, the appellant had submitted a revised plan showing the route of the PROW as being retained along its definitive alignment. The LPA Statement of Case⁴ states that the revised plan was received on 9 March 2026 and was presented to members of

³ Schedule 7A of the Town and Country Planning Act 1990, as amended (inserted by the Environmental Act 2021).

⁴ Paragraph 4.6.3 LPA Statement of Case.

the planning committee orally. It is understood that although Officers advised the Committee that the proposed revised plans would overcome the reasons for refusal, the Members of the Planning Committee resolved to maintain an objection to the development as there had not been an opportunity to formally consult on the revised plans with the Highway Authority. They were also concerned about the proposed boundary treatment of the PROW.

23. Firstly, it seems to me that refusal reason 5 was not accurate in its content. Revised Plans had been submitted to the LPA prior to the application being determined and which showed that the proposed development would safeguard the route of the PROW. Furthermore, even if the LPA had wished to seek the Highway Authority's advice on the Revised Plan, no attempt was made to do that, either after the Committee's decision, nor once the appeal had been made. Further consultation would have been prudent to narrow the matters in dispute at appeal. It was not until the Hearing that the Council Officer accepted in answer to my question that provided the route of the PROW was safeguarded as shown on the Revised Plan and a condition imposed to secure suitable boundary treatment, there would be no conflict with the development plan.
24. The Council persisted with an objection to the development throughout the appeal process which, given the evidence before them, could have been avoided. Consequently, the appellant incurred unnecessary and wasted expense defending a reason for refusal in relation to safeguarding the PROW.

Overall Conclusion

25. For the above reasons, I find unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the Planning Practice Guide, has been demonstrated and that a partial award of costs is justified.

Costs Order

26. 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 South Derbyshire Council shall pay Mr Sean Rogers, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's view that: the development could not be safely undertaken having regard to Coal Mining Legacy Risks (Refusal Reason1); the future occupiers and users of the site would be at risk from site contamination (Refusal Reason 2), and; the development fails to safeguard the route of Overseal Footpath 31 (Refusal Reason 5); such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to South Derbyshire 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.

Elizabeth Pleasant

INSPECTOR