Planning Inspectorate

Costs Decision

Site visit made on 13 November 2026

by Grahame J. Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2026

Costs application in relation to Appeal Ref: APP/C1760/X/25/3368292
The Water Tower, St Peters Close, Goodworth Clatford SP11 7SF

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Joe Li for a full award of costs against Test Valley Borough Council.
- The appeal was against the refusal of the Council to issue a notice of its decision on an application for a certificate of lawful use or development for use under Class E(g)(iii) - Industrial processes - Except where not suitable in a residential area.

Decision

1. The application for an award of costs is refused.

Submissions of the applicant

2. A full award of costs is applied for.

3. The lack of precision alleged by the Council was completely outwith the “small” Class R notification process. It was not open in law to object that the proposed development was not permitted development, although previous agricultural use has been more than adequately demonstrated, which the Council and parish council had previously confirmed. The Council changed its stance after May 2020 as they had then acknowledged agricultural use for the purposes of meeting the criteria in Class R. The Council gave undue weight to 3rd party objections.

4. In summary, the failure to undertake objective analysis and rely on procedural points that were wrong in law, was unreasonable. The Council’s behaviour was wholly unreasonable and prevented or delayed development which should clearly have been permitted, causing costs to be incurred.

Submissions of the Council

5. The case for agricultural use relied heavily on an email sent from the Council in May 2020 but it did not clarify the land use, there was no email thread to explain the context of the advice given and it was not part of a planning application.

6. The evidence submitted with the application was considered along with results of a search of the planning history and a site visit which revealed the condition of the water tower under scaffolding for several years, with no sign of activity inside or outside it. Due diligence was exercised better to understand the position. Any appeal would have required an assessment of the merits of the case, which was carried out. The Council acted reasonably throughout the application process.

Reasons

7. 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.

8. The burden of proof was on the appellant to demonstrate on the balance of probability that the development the subject of the appealed application was lawful when the application was made. That burden applies whether the matter under consideration concerns the “small” Class R permitted development right, as much as any other matter necessary to evidence the lawfulness of the use applied for.

9. The decision on the appeal was that insufficient evidence supported the appeal, including the representation alleged to have been made concerning the agricultural use of the land. The Council made reasonable enquiries, and their decision was rationally based.

10. In all the circumstances the behaviour of the Council was not unreasonable.

Conclusion

11. The application is refused.

Grahame J. Kean

INSPECTOR