Planning Inspectorate

Costs Decision

Site visit made on 17 July 2025

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2025

Costs application in relation to Appeal Ref: APP/M3645/W/25/3360870
Marhaba, Antlands Lane, Shipley Bridge, Surrey RH6 9TE

- The award 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 appeal was made by Mr Mark Johnson against the refusal of Tandridge District Council to grant planning permission for the demolition of existing building and erection of new 2-bed dwelling and outbuilding.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Preliminary Matter

2. Following the issue of my decision on 17 July 2025, the Planning Inspectorate's Costs and Decision Team wrote to the Council to say that I was considering whether to make an award of costs against them. This was on the grounds that the Council failed to correctly identify the site's planning history; did not correctly apply the National Planning Policy Framework (the Framework); and mis-identified the site as being within the Ashdown Forest Special Protection Area.

3. The Council responded on 20 August 2025 and disputed that it had acted unreasonably.

Reasons

4. 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.

Failure to correctly identify the site's planning history

5. The Council indicate in their response that they disagree with my evaluation of the planning permission granted in 2024. They say that the extant scheme was smaller and as a result it was not unreasonable to come to a conclusion that the newer scheme would have a detrimental impact on the character and appearance of the area. They do not elaborate on the extent of the perceived differences.

6. However, the Council did not identify this previous permission as part of its consideration of the subsequent planning application in December 2024. It was highlighted in the planning history but not discussed within the main body of the report, despite it being an important fall-back position and a material consideration. The report refers to the proposed building being 'materially larger' but does not say compared to what. It was larger than the existing building, but crucially the previous

permission permitted an extension to it. Thus, I agreed with the appellant, having been provided with a copy of the extant scheme, that the two were to all intents and purposes, the same.

7. It appears that the appellant pointed this out to the Council following the refusal. I was referred to an email in which the Council subsequently indicated to the applicant that a re-submitted planning application would be recommended for approval.

8. I subsequently sought the Council's views on this matter. The Council confirmed to me that the ground for refusal would not be defended as there would not be a harmful impact on the character and appearance of the wider area.

9. It is difficult to reconcile the Council's now stated position that it was reasonable to conclude the scheme was harmful, with its response to my initial query and its decision not to defend the reason for refusal at appeal. It is also difficult to square the position that the extant scheme was smaller and thus the refusal was initially justified when the extant scheme was not part of the deliberations on the acceptability or otherwise of the new scheme.

10. The PPG states authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes failure to substantiate reasons for refusal. The Council might disagree with my evaluation of the 2024 permission, but the previous permission was not addressed in the officer report, it was a material consideration and the reason for refusal was conceded at appeal. Collectively this all represents unreasonable behaviour.

Failing to have the correct regard to the Framework

11. The Council indicate that it was not unreasonable to have taken the decision that it did on 23 December 2024, following the issuing of the revised Framework on 12 December 2024 but prior to an amendment to paragraph 155 of the Framework published on 7 February 2025 and the updated PPG on 27 February 2025.

12. The Council indicate that their position 'is supported by recent current appeals that other Local Planning Authorities have had appeals upheld on similar grounds' but provide no examples in support of their case for me to assess.

13. Firstly, it is not clear why, given that the application had been with the Council since 1 July 2024, there was a need to determine the application by 23 December 2024, especially if there was doubt as to the applicability of grey belt in this case. However, the Officer report contained no indication that the issue of grey belt was in some way considered and rejected. There is a complete absence of any reference to it in the officer report.

14. While it may be true that there was a minor correction to the Framework and Paragraph 155 on 7 February 2025, the Council's email to the applicant on 5 February 2025, concedes that the site would be grey belt. The Council therefore did not need to wait for the updated Framework before arriving at the position that the site was grey belt.

15. Finally, the Council did not seek to defend the Green Belt reason for refusal at appeal and offered no explanation as to why it had changed its position. It would have been aware from the appeal submissions that there existed the possibility of a

costs claim arising in relation to the appeal. None of the Council's explanations lead me to the conclusion that in the circumstances their actions were anything but unreasonable.

Mis-identification of the site being in the Ashdown Forest Special Protection Area

16. The Council accepts that it mis-identified the site as being within the Ashdown Forest Special Protection Area (SPA). There is no explanation as to why this happened, despite there having been recent applications on the site. The fact that this mistake was not spotted adds weight to my earlier conclusion that the Council did not have proper regard to the previous permission.

17. The fact that the site being within the SPA was then advanced as a reason for refusal but not defended at appeal must be considered unreasonable behaviour in the circumstances of this appeal.

Further Comments

18. The Council suggest that in acknowledging to the applicant in February 2025 that it would look positively upon a resubmission, it did not delay a development which should have been permitted and did not require the applicant to appeal. They also point to the applicant's apparent 'lack of urgency' to develop the site.

19. Be that as it may, the Council failed to defend any of its reasons for refusal. As the PPG explains, the costs regime exists to, amongst other things, encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.

20. In the light of the Council having made its decision, the applicant had a right to an appeal. The Council subsequently acknowledging its mistakes did not remove that right. I am also mindful that the email from the planning officer as to a possible future positive recommendation was not binding on the Council. As such, this offered no greater guarantee of a successful outcome than the option of an appeal.

21. None of this therefore changes the fact that ultimately, the applicant choosing to exercise their right of appeal was not something which should have been necessary and this option existing was due entirely to the Council's actions. While the appeal submissions from the applicant were not extensive, relying largely on pointing out the Council's mistakes, some unnecessary or wasted expense would nonetheless have been incurred.

Conclusion

22. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

Costs Order

23. 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 Mark Johnson, 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.

24. 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.

Stewart Glassar

INSPECTOR