

**STATUTORY PLANNING APPEAL PURSUANT TO SECTIONS 78 OF THE TOWN AND COUNTRY
PLANNING ACT 1990
AGAINST SANDWELL METROPOLITAN BOROUGH COUNCIL**

APPEAL BY WAIN ESTATES (LAND) LIMITED

LAND NORTH OF WILDERNESS LANE, GREAT BARR

Inquiry opening 9 July 2024

APPEAL REFERENCE: APP/G4620/W/24/3341688

LPA APPEAL REFERENCE: DC/24/68822

APPELLANT'S RESPONSE TO THE COUNCIL'S COSTS APPLICATION

Introduction

1. The Council make an application for a full award of costs, which is refuted by the Appellant.

PPG Guidance

2. The PPG provides guidance on costs applications.
3. In planning appeals, the parties involved normally meet their own expenses. However, the cost awards' regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process.

4. Costs will normally be awarded where the following conditions have been met:¹
- A party has made a timely application for an award of costs;
 - The party against whom the award is sought has acted unreasonably; and
 - The unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process² - either the whole of the expense because it should not have been necessary for the matter to be determined by the appointed Inspector, or part of the expense because of the manner in which a party has behaved in the process.
5. The point of contention is whether the Appellant has acted unreasonably, such that the costs incurred in the appeal process have been incurred unnecessarily.
6. The word “unreasonable” is used in its ordinary meaning as established by the Courts in ***Manchester City Council v. SoSE & Mercury Communications Ltd*** [1998] JPL 774.³
7. Behaviour which is alleged to be unreasonable in the context of an application for an award of costs may be of a procedural or substantive nature. The Council’s application does not explicitly indicate what basis it is advanced on, but no procedural complaints seem to be raised, so it is taken as being a complaint of a substantive nature.

Submissions

8. It is difficult to respond to this costs application, given it is not entirely clear what the exact allegation of unreasonableness relates to. It appears to be akin to the Council simply asserting that it was unreasonable for the Appellant to ever advance this development proposal.

¹ Para 031

² The appeal process is regarded for costs purposes as starting from the submission of the appeal and ending on the day when the appeal is concluded, normally by its determination.

³ Para 031

9. The Council plainly disagree that permission should be granted, as they are entitled to do so. But it does not follow that the planning judgment of the Appellant is unreasonable that permission ought to be granted, simply because the Council disagree with it. The Appellant has fielded professional witnesses who sincerely believe, in their professional judgment, that permission should be granted. Indeed, the Appellant has invested significantly in this appeal on this basis. There is nothing inherently unreasonable with the Appellant advancing a very special circumstances case, particularly in the context that the Appellant has provided a suite of appeal decisions where a poor housing situation, as is the case here, has resulted in VSC being found.
10. Planning applications and appeals inherently involve an element of subjective planning judgment. The fact that the Council disagree with this judgment is not evidence of unreasonable behaviour.
11. The Council also suggest that no sequential test has been undertaken. However, there is no requirement to undertake one in these circumstances, as Mr Anderson-Stevens accepted.
12. The Council make a vague allegation concerning density and the design of buildings. Such matters are relevant to reserved matters and it is not entirely clear what is said to be unreasonable here. In any event, Mr Anderson-Stevens accepted that it formed no part of the Council's case to suggest that there was a density objection. Thus, this point goes nowhere and does not speak to unreasonable behaviour.
13. The Council suggest that they will achieve its housing delivery by building up and denser. This is simply rhetoric that Mr Anderson-Stevens accepted could apply anywhere nationally. There is no evidence to suggest that this is possible nor is there any tangible strategy to this effect.
14. Finally, the Council suggest that the Appellant have elected to ignore parts of government policy – albeit they do not specify what paragraphs have been left out. The Appellant has at all times recognised the hurdle involved in developing in the GB

and have always applied their mind to the test for VSC. Thus, no part of national policy has been ignored.

15. Respectfully to the Council, this costs application is poorly particularised and does not come close to highlighting sincere unreasonable behaviour.

Killian Garvey

Kings Chambers

16 July 2024