



WOKINGHAM BOROUGH COUNCIL

Wokingham Borough Council – Costs Rebuttal V2

Appellant:	Abbeymill Homes
Site:	Land West of Edney's Hill Barkham Road Barkham RG41 4TG
Local Planning Authority Reference:	251486
Appeal reference number:	6005646

12 June 2026

1. When can an application of costs be made

1.1 As outlined in the Planning Inspectorate's guidance, costs can be awarded to interested parties if both the following tests apply:

- the person applying was put to unnecessary or wasted expense in the appeal
- because of the unreasonable behaviour of the other party

1.2 The Planning Practice Guidance (PPG) states that 'unreasonable behaviour' in the context of an application for an award of costs may be either:

- procedural – relating to the process; *or*
- substantive – relating to the issues arising from the merits of the appeal

(PPG, Paragraph: 031 Reference ID: 16-031-20140306)

2. The Appellant's case

2.1 The Appellant is seeking a full award of costs in connection with this application. The award of costs is 'substantive' rather than 'procedural'.

2.2 The application for costs is made under 8 grounds:

1. That the inclusion of reason for refusal 3 (locational sustainability) is unreasonable and inconsistent with decisions and appeals on the site

2. The inclusion of reason for refusal 4 (highway technical details) is unjustified as the application was accompanied by sufficient information

3. Reason for refusal 5 (overlooking of plots 6 and 7) could have been overcome via condition

4. Reason for refusal 6 (noise implications) is inconsistent with previous applications on the site and surrounding area

5. Unreasonable to include reason for refusal 7 (trees) as the application was accompanied by clear and sufficient arboricultural information

6. Unreasonable to include reason for refusal 9, claiming the Council had not made any due diligence to check that tree T20 is off-site

7. The Council has materially altered its position regarding the application of the tilted balance

8. The Appellant not being able to use capacity at Rooks Nest Wood SANG

- 2.3 It is noted that grounds 1-6 were the basis of the Appellant's original cost claim. Since then, cost claim 7 was added (prior to the Hearing), and cost claim 8 was presented at the Hearing itself. The Council originally responded to ground 1-6 in their rebuttal (albeit it is noted that grounds 1-6 have been embellished by the Appellant since). The Council responded verbally at the hearing in response to ground 8 (and a copy of what was read has been given to the Inspector). Regarding ground 7, the Council were not aware of this ground for costs before or during the Hearing.
- 2.4 This statement seeks to clarify the Council's position on all the grounds for costs for completeness, as indicated by the Inspector would be acceptable at the site visit.

3. The Council's case

- 3.1 The following constitutes the Council's response to the Appellant's application for a full award of costs relating to the above site.

Procedural

- 3.2 As noted, the Appellant does not make their costs appeal on procedural matters. For completeness though, procedurally the LPA can confirm that the planning application was received validated on 22nd July 2025. The application was determined within the statutory timeframe and therefore procedurally the refused planning application was dealt with suitably by the Local Planning Authority.

Substantive

- 3.3 The Appellant's grounds relate to substantive matters.
- 3.4 The following (in **bold**) are the Appellant's broad grounds of the cost appeal. Underneath is the Council's rebuttal to that matter. Whilst 8 individual points/grounds have been made by the Appellant, several of these fall under a similar theme, and so are discussed together where appropriate and are indicated.
- **Inconsistency in assessment with previous applications on/ nearby the site, with particular reference on locational sustainability, public open space and noise impacts (grounds 1 and 4)**
- 3.5 Each planning application is required to be assessed on its own merits, although the Council acknowledge that a site's planning history can be a material consideration. This appeal scheme is for a materially larger number of units that what has been proposed on this site previously and is a greater

number than those applications referred to by the Appellant that are opposite the site.

3.6 Under this application, the locational sustainability of the application site has been professionally assessed by the Local Highways Authority in respect of the scale of scheme proposed, and in accordance with relevant policy and guidance, some of which was not in force at the time of those previous decisions.

3.7 A list of the applications referred to by the Appellant are below:

Applications referred to by Appellant			
Appeal / App Ref	Site Name	Refusal Decision Date	Date of Appeal Decision
161412	Coppid Hill House, RG41 4TG	23 rd May 2016	1 st March 2017
162084	Coppid Hill House, RG41 4TG	23 July 2016	7 th October 2016
171276	Coppid Hill House, RG41 4TG	23 rd August 2017	19 th April 2018
250735	Land North of School Road	2025	

3.8 Upon determining locational sustainability, the following documents are required to be considered, which as can be seen, were all published following the determination of those applications referred to by the Appellant, with the exception of the School Road site:

Policy and Guidance Changes	
Guidance	Date of Publication
WBC Living Streets	2019
DfT Local Transport Note 1/20: Cycle Infrastructure Design	July 2020
DfT Inclusive Mobility	2021
National Planning Policy Framework	December 2024

3.9 There has also been shifts in requirements on sustainability, most notably in the NPPF. Paragraph 35 of the 2012 NPPF stated that '*developments should*

be located and designed where practical to... give priority to pedestrian and cycle movements'. Under the 2024 NPPF, paragraph 117 raises the bar in terms of requirements and states 'applications for development should a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas'. This change in policy direction is notable and places greater and stricter emphasis on sustainable transport modes than what was in the 2012 NPPF which was in force at the time of the previous decisions referred to.

- 3.10 Based on professional judgement, using up to date planning and transport policy and guidance, the site is deemed an unsustainable location for the quantum of development proposed. This does not amount to unreasonable behaviour.

- 3.11 The Appellant asserts that the Council gave 'no justification' for its change in position. This is incorrect as it states the following in the delegated Officer's report:

It is acknowledged that the previously refused applications the site (see planning history) were not refused on the site being an unsustainable location. However, the quantum of development now proposed is double/ more than double that of the previous schemes. As such, this has to be factored into the assessment and whether the site is sustainable for this higher quantum of development.

Furthermore, the previous residential applications in 2016 were determined under the 2012 version of NPPF, which provided a less rigorous approach to sustainable development. However, the latest NPPF (dated December 2024) has significantly more emphasis on prioritising sustainable travel modes, limiting future car use and promoting well-designed places.

- 3.12 With regards to the School Road application (250735, referred to by the Appellant), it is worth noting that site benefits from a Primary School adjacent to the site and a Nursery and Londis foodstore within 700m walk via footways separated from traffic. The Appellant also states that the School Road application was approved despite consultee objections, and so the same approach should have been taken here. Applications of the 'tilted balance' are made on a case by case basis, and the fact an approval of a scheme for 70 dwellings elsewhere in the borough was approved by the Council's committee in light of the tilted balance, does not have bearing on the decision that should have been taken for this application.

- 3.13 With regards to access to public open space, whilst this too was not raised as a concern under previous applications on the site, this scheme again is for a higher quantum of dwellings and using up-to date guidance and professional judgement, with the correct application of policy TB08. This policy does not feature in the assessment of those previous applications on or opposite the site, but it does not justify non-compliance with the policy with this present appeal scheme.

- 3.14 The Appellant goes on to say that reason for refusal 6, relating to noise, is also inconsistent with previous decisions such as that opposite the site. It should be noted that on page 50 of the Council's validation checklist¹, it states when a planning application should be supported by a noise assessment. One such instance is for *“developments that are considered to be noise sensitive and which are close to existing sources of noise”*:

NOISE ASSESSMENT:

Applications for developments that raise issues of disturbance by noise to the occupants of nearby existing buildings, and for developments that are considered to be noise sensitive and which are close to existing sources of noise should be supported by a noise assessment prepared by a suitably qualified acoustician.

- 3.15 It would have been an expectation that a proposal for new noise sensitive receptors (16 dwellings) in close proximity of a busy 'B' road and agricultural activity from the farm to the south would be supported by a noise assessment, and the Council's has used its discretion to validate the application pending an assessment by Environmental Health specialists.
- 3.16 Irrespective of previous applications on or nearby the site, an up-to-date noise assessment is required to inform that in principle, a site is suitable in relation to external noise sources. These noise sources can change over time.
- 3.17 A noise assessment was also required as part of the application to demonstrate any specific mitigation that would be required and what that would be; securing an initial noise assessment only by condition could run the risk of substantial mitigation being required and not being able to be achieved, leaving the practical deliverability of the permission granted in potential limbo, and thus the condition not meeting the required tests. An indication of whether mitigation is needed and what this would be is therefore required at application stage, with the specific mitigation measures being secured via condition gives a greater chance of these materialising.
- 3.18 As such, without a noise assessment to inform the acceptability of the site for residential purposes in principle (in light of the noisy activity around the site) future occupiers could be exposed to harmful levels of noise pollution, making accommodation of poor quality. As such, the reason for refusal did not demonstrate unreasonable behaviour, and the Council has worked with the Appellant so that the reason for refusal was overcome by the time of the Hearing.

¹ Wokingham Council Local Validation List (2025): <chrome-extension://efaidnbmnnnibpcajpglclefndmkaj/https://www.wokingham.gov.uk/sites/wokingham/files/2025-09/Local%20Validation%20List%20-%202005.09.2025.pdf>

- **Suitable technical information had been submitted in relation to highway and tree matters (grounds 2 and 5) and the Council has materially altered its position regarding the application of the tilted balance (ground 7)**

- 3.19 As part of the application, the Council did not conclude that technical information submitted by the Appellant in respect of highway and tree matters was accurate, and this position remains as part of the appeal. It is not unreasonable behaviour for the Council to exercise professional judgement that does not align with the Appellant's. The arguments made by the Appellant are straying into the discussion on these topics that will be reserved for the hearing and the Inspector's due consideration. The concerns regarding the width of Edney's Hill and how this affected the development were contained with the Local Highway Authority's consultation response and reflected in the wording of reason for refusal 4 which explicitly referred to the development not providing satisfactory access arrangements.
- 3.20 Specifically regarding trees, it was acknowledged within the Council's statement of case and at the Hearing that at the time the application was determined, reason for refusal 7 was not drafted with T20 in mind as it had not been identified by the Council's tree specialist that the required buffer zone for T20 would be harmfully encroached. T20 was considered to be a veteran tree at application stage by the Tree Officer and the tree is recoded on the Ancient Tree Inventory ref. 163180.
- 3.21 As the proposed site layout was amended to support the appeal, the Council's Tree Officer had a duty to review the scheme once again. Upon this review, it was concluded by the tree specialist that the required buffer zone for this tree, which is considered to be veteran, would in fact be harmfully encroached when applying the correct buffer zone calculation. Officers have a duty to report this identified harm and assess accordingly in line with the NPPF, specifically paragraph 193(c), when presented with this information.
- 3.22 The Appellant has always been of the view that T20 is not a veteran tree. As such, although this matter regarding the impact on T20 has only emerged at appeal stage, the Council do not see that the issue has resulted in wasted time or expense for the Appellant as ultimately there has always been disagreement on the veteran status of T20 and therefore the absolute required buffer that would be needed for the tree (as that is dependant on its classification).
- 3.23 There was already a reason for refusal on the decision notice relating to trees and so specialist arboricultural input for the Appellant was already sought, rather than harm to trees being newly introduced at appeal stage which would have required additional resourcing. The Council also presented its case regarding harm to T20 within the statement of case. The Appellant was then given an opportunity to new or additional points raised, which this would have been one. However, the Council have not had sight of any rebuttal made to

this specific matter in advance of the Hearing, and so are not aware additional cost has been incurred in that sense and both parties remain in disagreement regarding the status of T20 in terms of whether it is veteran, as was the case at application stage.

- 3.24 It is acknowledged that this harm to T20 has resulted in the Council's reassessment of the planning balance at appeal stage, and concluding the tilted balance is not engaged in light of footnote 7. However, this is not unreasonable in light of the information presented by the Council's tree specialist upon reviewing of the appeal scheme, the application of paragraph 193 of the NPPF. Furthermore, the planning balance can naturally evolve and shift during the course of applications and appeals as information comes to light or develops.

- **That tree T20 is off-site and the Council acted unreasonably by concluding it is on site (ground 6)**

- 3.25 This matter is discussed within the Council's Statement of Case for reason for refusal 9. The Council maintains the view that the tree in question was on site for the purposes of this application at the time of determination and is on-site for the purposes of this appeal. As mentioned in the Council's Statement of Case and supporting evidence from the WBC Ecologist, the scale of the Tree Protection Plan submitted for both the application and updated version for the appeal are at a scale of 1:500 and clearly show the red-line boundary passing directly through the centre of the stem of T20. Given the recognised accuracy of the boundary mapping and the precision of the arboricultural plotting, the submitted evidence demonstrates that T20 is located within the application site. In addition, the Arboricultural Impact Assessment submitted alongside the planning application (Aspect Arboriculture, April 2025) explicitly identifies T20 as "*the site's principal tree*", stating that it occupies the south-western corner of the application site and makes an important contribution to site amenity. This description clearly confirms that the tree is considered to be on-site within the applicant's own supporting documentation.
- 3.26 The Appellant's view that the Council's TPO records clearly show the tree off-site is also unfounded, as discussed at the Hearing. TPO records are to provide an indication of trees in general terms, not outline specifically what land they sit on or how they sit in relation to boundaries.
- 3.27 The Council are of the view that as the application documentation shows the tree on the red line boundary, it is within the application site, irrespective of physical boundaries on the ground. Accordingly, the tree should be recorded in the Biodiversity Net Gain baseline as it is considered to be on-site, which has not been done, and as such reason for refusal 9 is upheld by the Council.
- 3.28 The Council has therefore not acted unreasonably in its determination that T20 is on site, based on the information submitted to and made available to the Council by the Appellant.

- **That reason for refusal 5 could have been overcome via a condition (ground 3)**

3.29 The proposed site layout shown as part of the application would have resulted in the amenity space of plots 6 and 7 being compromised from plot 11. The Appellant asserts that a privacy screen could have been secured via condition to overcome this and this is accepted. Updates to the plans have been made during this appeal that have now to show a 1.8m high glazed screen on the balcony of plot 11. This would have not have likely resulted in substantial time or effort from the Appellant to address as part of this appeal and the Council has an obligation to proactively explore ways in which reasons for refusal can be overcome, thereby narrowing the matters in dispute. Furthermore, whilst this matter could have been addressed at application stage, the Council are not of the view that this would have resulted in a different overall outcome of the application; rather, it would have wasted time and expense for the applicant at application stage.

- **The Appellant not being able to use capacity at Rooks Nest Wood SANG (ground 8)**

3.30 The Rooks Nest SANG is a privately owned SANG. The use of the SANG is a privilege given by the Council and not an automatic right to applicants. Due to the very limited spare capacity at the Rooks Nest SANG for just 27 units, only policy compliant schemes are willing to be accommodated, as confirmed by the SANG portfolio holder. As this scheme was deemed not to be compliant in a number of respects, capacity could not be offered and this has also been the case for other schemes that have reached appeal stage. Indeed this was the case with the Reading Road appeal at paragraph 77.

3.31 However, the Council advised the Appellant that capacity may not be available at Rooks Nest within the delegated Officer report (page 45) which for the application and stated:

Should the Council not wish to supply SANG capacity from Rooks Nest Wood SANG, another strategic SANG will need to be identified and the applicant will need to show that this meets the standards required for it to be viable SANG for this site.

3.32 Furthermore, the Appellant was advised early on in the appeal process (27th March) in an email sent to Mr Northey and the Appellant's solicitor that SANG at Rooks Nest Wood could not be offered so the Appellant had suitable time to make other arrangements and to amend their draft legal agreement. The Council further assisted the Appellant on 13th April by giving direction as to what other SANGs are within the catchment of the Appeal site, which were the Blagrove Lane and Langley Mead Extension SANGs, who they are owned by, and made the Appellant aware of the potential Grampian condition route.

*(All of these emails can be seen in **Appendix 1** - no acknowledgement of the email sent 13th April to the Appellant was received, or in relation to its contents, but it is evident it was helpful to the Appellant).* The Council, on 4th June in their letter to PINS, also provided advice on how to ensure a Grampian condition is suitably worded to overcome the SANG matter in light of Natural England guidance. With all this, subject to the Inspector's agreement, the matter of SANG has been overcome. As such, rather than acting unreasonably, the Council consider they have worked very proactively to help the Appellant overcome this issue.

4. Conclusion

- 4.1 To conclude, it would appear that some of the Appellant's grounds appear to be on the basis that they simply do not agree with the assessment carried out by the Council, or that it is not substantiated. Professional disagreement does not amount to unreasonable or obstructive behaviour, and the Council consider that its assessment is suitably substantiated and reasoned.
- 4.2 This appeal scheme is for a materially larger residential proposal than what has been previously proposed on the site and therefore it is in conclusion that the site-specific circumstances are incomparable to other schemes on the site or nearby. The Appellant is over-relying on comparisons to other schemes, which are not generally comparable due to their size, or other unrelated schemes, as opposed to focusing on the harms that were identified as part of the original application, and are for consideration as part of this appeal.
- 4.3 While the Council acknowledges that overlooking from the balcony of plot 11 could have potentially been mitigated by a suitably worded condition for a privacy screen, this does not overcome the more fundamental harms identified in other reasons for refusal of the application, and therefore as a whole the Council has not acted unreasonably with regard to the determination of the application as a whole.
- 4.4 The Appellant asserts that there was no effort to engage with the applicant during the application or appeal process resulting in limited common ground. Due to the in principle disagreement on fundamentals of the scheme (ie. principle of development, landscape harm and being an unsustainable location), negotiation or amendments would have resulted in time and expense for both parties and would not have changed the outcome of the application in the view of the Council. Instead, the Council sought to proceed to determine the application within statutory timeframes to allow the Appellant to progress accordingly and as they pleased without undue delay, and where modifications could be made to the scheme at a more appropriate point (such as at appeal stage) if the Appellant saw fit.
- 4.5 The Appellant was informed in advance of the application being determined that it had substantial concerns of the proposal and provided with consultation comments (emails sent to the applicant on 25/09/25 and 26/09/2025 via

email) (**Appendix 2**). This email trail shows the entire email correspondence during the application – the next correspondence was from the Appellant in March 2026 advising they have appealed to the decision. As will be seen, the Appellant was briefed on the decision to refuse the application before it was formally made. A holistic view of the application was sought to be given at the appropriate time which factored in multiple consultation responses which were all received at various points in time. Nevertheless, feedback was given well in advance of the statutory determination date.

- 4.6 The Council has actively worked with the Appellant at the appeal stage where possible, and as a result a number of reasons for refusal have fallen away.
- 4.7 This scheme was submitted to the Council without any pre-application advice, which could have revealed key issues to the Appellant. This was unusual, given the site-specific context of previous refusals and appeals for residential developments on this site, and the significantly larger number of proposed dwellings in the current scheme.
- 4.8 The PPG advises that where Local Planning Authorities have exercised their duty to determine a planning application in a reasonable manner, they should not be liable for an award of costs. It goes on to say:

“Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.”

(PPG, Paragraph: 050 050 Reference ID: 16-050-20140306)

- 4.9 The Council consider the above is the case and politely request that the award of costs is refused.