

Land between Lodge Road and Tape Lane, Hurst
(Appeal Ref: APP/X0360/W/25/3364304)

Appellant's Costs Application

Introduction

1. This application is made by the Appellant for a partial award of costs against Wokingham District Council (“the Council”) in relation to the above appeal. It is made in accordance with the guidance at paras. 27 – 54 of the NPPG because of the Council’s unreasonable behaviour in putting the Appellant to the costs of having to produce and call evidence in relation to the status of two trees alleged by the Council to be veteran trees and the policy consequences that flow from that.

The Costs Regime

2. The NPPG advises that the aim of the costs regime is to encourage:-
 - (1) all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and the presentation of full and detailed evidence to support their case; and
 - (2) local planning authorities to properly exercise their development management responsibilities and rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case – see NPPG Paragraph: 028, Reference ID: 16-028-20140306.
3. Costs may be awarded where:-
 - (1) a party has behaved “unreasonably”; and

- (2) that “unreasonable” behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process – see NPPG Paragraph: 030, Reference ID: 16-030-20140306.
4. “Unreasonable” is used in its ordinary meaning – see *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774 – and may be either procedural (i.e. relating to the process) or substantive (i.e. relating to the issues arising from the merits of the appeal) – see NPPG Paragraph 031, Reference ID: 16-031-20140306).
5. The NPPG also gives non-exhaustive examples of the types of unreasonable behaviour that may give rise to a substantive award against a local planning authority – NPPG Paragraph: 049, Reference ID: 16-049-20140306. These include:-
- (1) failure to produce evidence to substantiate each reason for refusal on appeal;
 - (2) not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination) as part of sensible on-going case management.

Background

6. The Council’s reasons for refusal included RfR 6 and 7. RfR 6 related to the BNG baseline and has been resolved such that the Council no longer relies on RfR 6 as a reason for refusal. RfR 7 alleged that the Appellant had failed to demonstrate that the proposed development would have an acceptable impact on ecology and biodiversity by reason of the impact on protected species, wildlife and habitats [CD1.1]. The Council’s Statement of Case [CD2.2] paraphrased the officer’s delegated report [CD1.2] and alleged that:-

“11.1 Degradation of the site via the loss of two veteran trees, identified as T85 and T86 in the Ecological Impact Assessment (EcIA) has been accepted by the Appellant...

11.2 The loss and compensation of irreplaceable habitat is not to be resolved within the biodiversity net gain metric and instead, a separate suitable compensation strategy needs to be agreed. No compensation strategy was submitted with the application or with the Appeal Statement. A compensation Strategy was provided to the council on June 4th after the appeal was lodged which is currently being reviewed.

11.3 On the basis that an acceptable compensation strategy does not exist, this proposal should be refused as per National Planning Policy Framework paragraph 186 (c)¹.”

7. No reference is made in the Council’s Statement of Case for the Appellant to demonstrate that wholly exceptional reasons existed.
8. The Council’s position resulted in further information being provided in June/July to the Council as explained by Ms Major [**CD5.4, para. 2.3**]. As both her evidence and the Technical Note dated 4 June 2025 at Appendix 2 (para. 2.8) of her PoE made clear, the felled trees were “*assumed to be veteran as a precaution under the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024*”. The Appellant has never accepted that the two felled trees were veteran trees let alone that they fell with the NPPF Glossary definition of veteran trees.
9. This position was reiterated by Mr Pratt in his email dated 9 July 2025 to Mr Croucher (included in Appendix 3 to Ms Major’s PoE [**CD5.4**]) who said:-

“While unlikely, the trees had potential to meet the definition of a veteran tree under the BNG Regulations definition. Therefore, we have taken a precautionary approach and have considered the two trees as veteran trees under the BNG definition (not the NPPF definition). Accordingly, the trees have been included in the BNG metric baseline, and we have submitted a separate Compensation Strategy to address their loss in the context of the BNG Regulations. This is consistent with the BNG guidance, for the purposes of the BNG calculation...

We appreciate that the distinction between the NPPF and BNG definitions of veteran trees can be nuanced. In this case, the trees did not meet the criteria of the NPPF definition, however, they have been appropriately addressed under

¹ This was correct when the application was refused but by the time of the Council’s Statement of Case the NPPF had been amended (Dec. 2014) and the correct para. was 193(c).

the BNG Regulations, with a robust and policy-compliant compensation strategy in place.”

10. Thus, the position could not have been made clearer to the Council. There has never been any acceptance by the Appellant that the felled trees are “veteran” within the Glossary definition or for the purposes of the para. 193(c) NPPF. The Council’s position that the Appellant has done so and, therefore, the Appellant needs to demonstrate that there are wholly exceptional circumstances and a suitable compensation strategy, is both wrong and unreasonable.
11. Nonetheless and because the Council maintained its position (see the email from Mr Croucher to Mr Slatter dated 14 July 2025 at Appendix 3 of Ms Major’s PoE), the Appellant prepared PoE’s from both Ms Major and Mr Pratt addressing the issue of whether the felled trees were veteran trees within the NPPF definition. In particular, Mr Pratt (a qualified and experienced arboriculturalist) provided detailed evidence of the analysis he has undertaken and, on the best evidence available, concluded that the two trees were of insufficient age and size to meet the NPPF definition which requires a tree to be of sufficient age, size and condition to meet the NPPF definition (and therefore engage para. 193(c) – see PoE para 3.2 [**CD5.7**] and the analysis in the Tree Compensation Strategy [**CD11.3**]).
12. Mr Pratt also provided evidence of the conventional approach taken by inspectors to the cumulative requirements in order for a tree to meet the NPPF definition. None of Mr Pratt’s analysis of the condition of the trees and whether they met the NPPF criteria or, indeed, the interpretation of the NPPF definition has been challenged. No arboricultural evidence has been presented by the Council in relation to the age, size or condition of the felled trees to supports it position that the trees were veteran trees and that para. 193(c) is engaged. The Council’s case on this issue is based entirely on the wrong and

unreasonable premise that the Appellant has accepted that the trees were veteran trees for the purposes of the NPPF.

13. Moreover, the Council's subsequent reliance on the PPG and Woodland Trust Guidance to construe the NPPF criteria as being disjunctive is unreasonable in circumstances where the Council was aware that in an appeal decision dated 24 July 2025 relating to Wyse Hill Lodge, Finchampstead in Wokingham Borough an Inspector concluded against the Council that a tree to be felled was not a veteran tree which was disputed by the appellant in that case as the Council had alleged relying on the Woodland Trust Inventory. At DL6², the Inspector concluded that:-

“... The criteria under the Framework include the word ‘and’ which suggests that all three criteria of age, size and condition need to be met. From my own site visit as well as the information in front of me, I do not consider that the tree meets the definition set out in the Framework to be classified as a veteran tree, including in terms of age, size and condition, and particularly in terms of condition, to indicate exceptional biodiversity, cultural or heritage value. I do not therefore consider that further consideration requires to be directed to Paragraph 193 c) of the Framework.”

14. Having become aware of the Wyse Hill Lodge decision after the Inquiry adjourned on 19 August 2025, on 27 August 2025 the Appellant wrote to the Council inviting it to agree that the NPPF definition was to be preferred and that the trees were not veteran trees for the purposes of para. 193(c) NPPF. No response has ever been received from the Council.

The Council's unreasonable behaviour

15. The Council has acted unreasonably in the following respects:-
 - (1) deliberately or otherwise mischaracterising the Appellant's position on whether the trees were veteran trees when the Appellant had made clear

² A full copy of the DL is attached to this Cost Application for completeness.

- that had only assumed the trees were veteran as a precaution for the purposes of calculating the BNG baseline;
- (2) persisting in maintaining that position when the Appellant's position had been made crystal clear;
 - (3) failing to adduce any evidence to contradict the Appellant's detailed assessment of whether the trees met the age, size and condition criteria in the NPPF definition or any assessment of its own by a qualified officer or consultant and thereby failing to adduce any evidence in support of RfR 7;
 - (4) failing to draw the Inspector's attention to the Wyse Hill Lodge appeal decision notwithstanding it (a) relates to development within the Council's borough definition position; (b) is very recent; (c) considered what NPPF definition of veteran tree is; and (d) concluded contrary to the Council case in that appeal and in the present appeal that the NPPF definition requires that all the criteria of age, size and condition have to be met;
 - (5) failing to agree with the Appellant that all the criteria in the NPPF definition have to be met for a tree to be a veteran tree when the Wyse Hill Lodge was drawn to its attention or even responding to the Appellant;
 - (6) persisting with its interpretation of the NPPF definition when it was fully aware of the Wyse Hill Lodge decision letter from at least 27 August 2025 when the Appellant drew it to the Council's attention; and
 - (7) persisting with an argument that it failed to run in the 2023 Appeal notwithstanding neither the NPPF definition nor the PPG advice was the same then as it is now.

The Council's unreasonable behaviour has resulted in the Appellant incurring costs unnecessarily

16. The Council continued persistence in its Statement of Case, subsequently in its email dated 14 July (see para. 11 above) and Mr Croucher's PoE required the

Appellant to prepare and call evidence on that issue and to address RfR 7 from Ms Major and Mr Pratt including their respective PoE's, Mr Pratt's Rebuttal PoE and their attendance at and their participation in the round table session. Had the Council acted reasonably it would not have been necessary to do so and the Appellant has incurred costs unnecessarily.

Conclusion

17. For the compelling reasons set out above, both requirements for an award of costs have been satisfied and the Appellant submits that it is entitled to a partial award of its costs in addressing RfR 7.

Dated 26 September 2025

John Litton KC

Nick Grant

Landmark Chambers