

Land between Lodge Road and Tape Lane, Hurst

Appeal Ref: APP/X0360/W/25/3364304

Appellant's Response to Council's Costs Application

Introduction

1. This is the Appellant's response to the Council's Costs Application dated 18 September 2025 (the "Application"). The Application is misconceived and should be refused.
2. As the Inspector will be aware, costs are only awarded if (a) there has been unreasonable conduct, which (b) has directly caused another party to incur unnecessary or wasted expense in the appeal process - PPG para. 028. The Council can satisfy neither.

Alleged unreasonable conduct

Failure to resolve the issue in advance (paras. 25-27)

3. The point is without any merit.
4. First, the EA objected to the previous application (which became the 2023 Appeal Decision) in similar terms to its objection to this application (attached to this response). However, flood risk was not a matter for refusal and the Inspector at that the time indicated that the matter could be dealt with by condition - [CD7.1] paras. 114-119. What is surprising, therefore, is that the Council took a different approach this time to that in 2022/2023. This is particularly so where

the point now relied on by the Council in its application did not form part of the EA's objection, but was simply one of a number of informatives in [CD9.1].

5. Second, although the EA's objection to the present application is dated 29th October 2024, it was only forwarded by the Council to the Appellant after 4.30pm on 14th of November 2024. The reference to October in para. 25 is mistaken. Thereafter, a 10 day extension of time was agreed before the Council refused the application using delegated powers.
6. Third, the EA's objection was not, at that time (i.e. October/November), that the Site was at risk of fluvial flooding.
7. Fourth, the Council incorrectly asserts in para. 26 that the Appellant "*does not seem to have engaged with the Environment Agency's objection until 17 March 2025*". Following refusal, the Appellant sought to engage with the EA directly by providing its model on 05 December 2024. However, it was told on 19 December 2024 by the EA that, before it could review any modelling, it would need confirmation from the Council it was formally consulting the EA. Accordingly, it had been understood that no meaningful progress with the EA could be achieved without a formal appeal - see the attached email chain attached. It was not until January 2025 that the EA accepted it could work with the Appellant to resolve matters prior to appeal. Thereafter, it became incredibly difficult to get a meeting with the EA. A meeting was not held until 17 March 2025.

8. Fifth, the implicit suggestion in para. 26 that the Appellant and EA could have resolved the issue in the remaining six weeks of the time period before appealing is obviously wrong. It has taken far longer than that to get to the now agreed position with the EA. Moreover, as noted in para. 15 of the Application, the EA's standard turnaround time is "*a minimum of 6 weeks*". There is no indication at all that, absent the pressure of this appeal, the time taken by the EA would not have increased.
9. Sixth, for many of the same reasons, the Council's suggestion that flood risk matters could have been resolved much earlier is self-evidently wrong and contradicted by the EA's response times.

Piecemeal Approach (paras. 28-30)

10. The Council cannot sensibly suggest that providing revised versions of complex hydraulic flood models and Flood Risk Assessments through an iterative process before reaching agreement with the EA is a flawed approach. That is a consequence of how the EA responds and the nature of resolving technical objections where, for example, following the submission of a revised model, the Appellant has each time had to wait weeks before receiving the EA's formal response to know whether any issues had been identified with the model/FRA and, if so, what those issues were alleged to be.

11. Nor can there be any sensible contention that the Inspector is not entitled – indeed required – to receive evidence outlining the parties’ positions.
12. The substance of the Council’s case for costs is, therefore, concerned with timing, and the fact that this has occurred in the lead up to and during the inquiry. But:
 - (1) The timing is a consequence of the difficulties the Appellant had in seeking to resolve the issue with the EA. It is implicit in this limb of the Council’s submissions that the matter could somehow have been agreed well in advance of the Inquiry. For the reasons set out above, that is obviously wrong.
 - (2) The Council will recall that, at the CMC, Counsel for the Appellant raised the possibility of the Inquiry being postponed to allow time for the matter be resolved. That proposal was not supported by the Council.
13. Whilst para. 30 refers to the LLFA, it has not commented on any version of the FRADS and has no objection to the proposed drainage strategy. It is not clear what point the Council is making.

Sequential Test (paras. 31-39)

14. The litany of complaints at paras. 31-37 illustrate that the Appellant was endeavouring to make appropriate adjustments and not set hares running, pending confirmation of the final position by the EA. They do not indicate or amount to unreasonable conduct.

15. Picking up from the point at which the Council claims the ST should have been disclosed (15 July with the exchange of proofs), and *in particular* the suggestion that the sequential test was disclosed later “*without any advance notice*” (para. 38), the Council has failed to note that:
- (1) Late evidence was agreed to be provided on the flood risk issue. Contrary to para. 32, the Sequential Test is obviously part of the flood risk issue for which permission for late evidence was granted.
 - (2) On 23 June Mr Slatter asked Mr Croucher to agree or advise on an area of search for the purposes of undertaking a sequential test, and provided a plan the following day. Mr Croucher confirmed his preferred area of search (the whole borough) on 2 July. The Council was clearly aware of and on notice that the Appellant was proposing to undertake a sequential test.
 - (3) On 24 July, Mr Croucher was sent a draft CD list which included CD9.20, the sequential test.
16. Therefore, the suggestion there was no advance notice that the Appellant would be carrying out a sequential test is wrong and disingenuous.
17. For the reasons set out above there has been no unreasonable conduct on the part of the Appellant.

Alleged expense (para. 40)

18. The Council's attempt to identify an element of wasted expense to satisfy the second limb is plainly flawed.
19. First, the Council's claim that the main issue could have been resolved before the Inquiry started is misconceived for the reasons set out above. The Council would always have had to prepare a case on the flooding issue.
20. Second, the Council's second alleged limb of loss (reviewing and preparing responses to evidence) is similarly flawed. The Council would only have avoided incurring cost if it had been possible to resolve the flooding issues with the EA prior to the Inquiry. For the reasons set out above and for no fault of the Appellant, that was not possible. Mr Croucher therefore had to prepare evidence on the point. Quite why the Council considers Mr Croucher would not have had to prepare his Proof on the sequential test is entirely unexplained. Moreover, Mr Croucher maintained in his evidence (day 5) that the sequential test applied *notwithstanding* the resolution of the EA's objection, and maintained his criticisms of it. Thus, the preparation of his evidence on the sequential test was not dependent on the outcome of the EA's response.
21. Third, the Council inexplicably took over 5 weeks to respond to the Sequential Test submitted by the Appellant on 29 July. Even, if the Appellant had submitted it with its evidence on 15 July, the Council

would not have been in a position to respond before the start of the Inquiry.

22. Fourth, the Inquiry has not lost sitting days. The Inquiry was allocated 8 days by PINS and the Council agreed at the CMC to the time allowed. The appeal has sat for 5 days in total (with the Closing Submissions in writing). There is no claim that additional costs have been unnecessarily incurred as a consequence of the Inquiry adjourning on 19 August and resuming on 22 September. On the contrary, the adjournment has allowed the issues with the EA to be resolved which otherwise would have had to be heard by taking up additional Inquiry days. The adjournment to allow the issue with the EA to be resolved has led to less costs being incurred, not more.
23. For these reasons, the Council is unable to show that any conduct, however allegedly unreasonable, has directly caused it to incur costs unnecessarily.

Conclusion

24. The Application is plainly misconceived and should be dismissed.

Dated 26 September 2025

John Litton KC

Nick Grant

Landmark Chambers