



Planning

Costs Statement

Client:

Brighter Living

515 Reading Road,

Winnersh, RG41 5EX

*Costs application following the refusal of application
ref. 252236*

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01 Introduction

- 1.1 The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
- 1.2 The PPG also makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
- 1.3 This application for costs is made in relation to the written representation planning appeal against the decision of Wokingham Borough Council against the refusal of application ref. 252236.

02 The Appellant's Case for Costs

2.1 When considering the Appellant's case for costs, the first consideration is around the Written Ministerial Statement for Children's Homes (**Costs Appendix 1**). This states that the following:

"The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love.

Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this.

*Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or **there is no material change of use to Class C2.**" [ET Planning emphasis added]*

- 2.2 As has been set out in the Appellant's Statement of Case, it is agreed between the parties that the lawful use of the premises would fall within Use Class C2. The central question for the purposes of the LDC application was therefore whether the change from C3 to C2 would amount to a

material change of use, as defined under section 55 of the Town and Country Planning Act 1990.

2.3 The Council's assessment failed to apply this legal test correctly. The refusal focuses heavily on generalised differences between the C2 and C3 use classes, and on strategic housing policy distinctions, rather than addressing the only legally relevant question: whether the proposed operation of this particular children's home would change the planning character of the use of the land to a material degree.

2.4 This approach constitutes a misdirection in law. As clarified in *Sage v SSCLG* [2021] and the *Kensington & Chelsea v SSCLG (Reis)* [2016] judgment:

"the existence of different use classes cannot, in itself, establish materiality. The correct test is whether the actual character of the use would change in planning terms, assessed as a matter of fact and degree.

Environmental impacts are not determinative, but merely evidential where present."

2.5 The Council did not follow this approach. Instead, it conflated the policy distinction between C2 and C3 uses with the statutory test under s.55.

- 2.6 The applicant provided comprehensive, detailed evidence demonstrating that the home would operate on a small domestic scale, accommodating only four children.
- 2.7 The children would live at the property and occupy the premises in a manner wholly comparable to a family household.
- 2.8 Staffing patterns have been explicitly designed to minimise activity, with modest and staggered shift changeovers.
- 2.9 Trip generation, comings and goings, and general activity levels would be akin to those of a typical large family dwelling.
- 2.10 The Council disregarded this evidence and relied instead on speculation about staffing numbers, vehicle movements, shift changeovers and professional visits. It asserted that such matters could result in materially different activity levels but provided no evidence or objective assessment to justify this.
- 2.11 The PPG is clear that unsubstantiated assertions and assumptions amount to unreasonable behaviour in costs terms.
- 2.12 A significant portion of the delegated report relies on the idea that the difference between C2 and C3 uses serves a strategic policy function and

therefore must automatically represent a materially different land-use character. This is legally incorrect.

2.13 The Reis judgment explicitly warns against substituting policy distinctions for the statutory test of materiality. Housing land supply categorisation is irrelevant to whether a change of use is material in planning terms for the purposes of an LDC.

2.14 The law requires the decision-maker to examine the actual land-use characteristics, not the theoretical policy implications of different use classes. By failing to grapple with the factual circumstances of the proposed use, and instead resting its reasoning on policy classifications, the Council again misdirected itself.

2.15 Every cited appeal examples the Council use within their report involved materially different circumstances, including:

- Larger homes.
- Short-term emergency placements.
- Demonstrably higher staffing ratios

2.16 The Council did not assess the factual differences between those cases and the current proposal. Instead, it applied those decisions as if they were

determinative, even though the courts have repeatedly stressed that materiality must be assessed case-by-case.

2.17 It also important to note a specific nuance in relation to this case. The Appellant provided a legal opinion as part of the application that focused specifically on the appeal site and discussed the proposal in relation to this.

2.18 The Council's officer report makes no reference as to whether their own legal advice was sought. As outlined above, there is an over-reliance on wider cases, rather than dealing with the specifics of the case in hand.

2.19 The Planning Practice Guidance makes clear that costs may be awarded where a local planning authority behaves unreasonably, including by misinterpreting or misapplying the law, by failing to properly consider relevant evidence, or by relying on generalised or unsubstantiated assertions in place of a reasoned planning judgement.

2.20 In this case, the Council failed to apply the correct legal test for materiality under Section 55 of the TCPA, placed undue reliance on policy distinctions between use classes, and did not engage with the detailed operational evidence provided. This falls squarely within the type of unreasonable behaviour identified in the PPG and directly led to the need for the appeal.

2.21 Further grounds for costs include inconsistent decision making. The Council previously granted a lawful development certificate for a children's home at 23 Almond Close (Application ref. 240778 – **Costs Appendix 2**) on the basis that there was no material change of use. This is explicitly noted in the legal opinion.

2.22 The Council have incorrectly stated that the proposal would result in the loss of an open market dwelling. This is incorrect – the proposal would remain in a residential use class, albeit exclusively for looked after children.

2.23 Lastly, the Council's assessment that children with autism (those who would occupy the home) constitutes to case that a material change of use is occurring is in breach of the Public Sector Equality Duty which prohibits decision making grounded in stereotype rather than evidence. The Council's case relies on generalisation and speculation – not site specific evidence such as the legal opinion provided by the Appellant.

2.24 The PPG states that costs may be awarded where a local planning authority "fails to consider or properly take into account relevant matters," and where a decision is based on "vague, generalised or inaccurate assertions" unsupported by objective analysis.

2.25 The PPG further confirms that authorities must substantiate reasons for refusal with evidence; reliance on generalised assumptions—particularly

concerning a protected group—does not meet this requirement. By grounding its decision in stereotype rather than fact, and by failing to demonstrate any consideration of its equality duty, the Council acted unreasonably in a way that directly caused the Appellant to incur unnecessary expense in bringing this appeal.

03 Conclusion

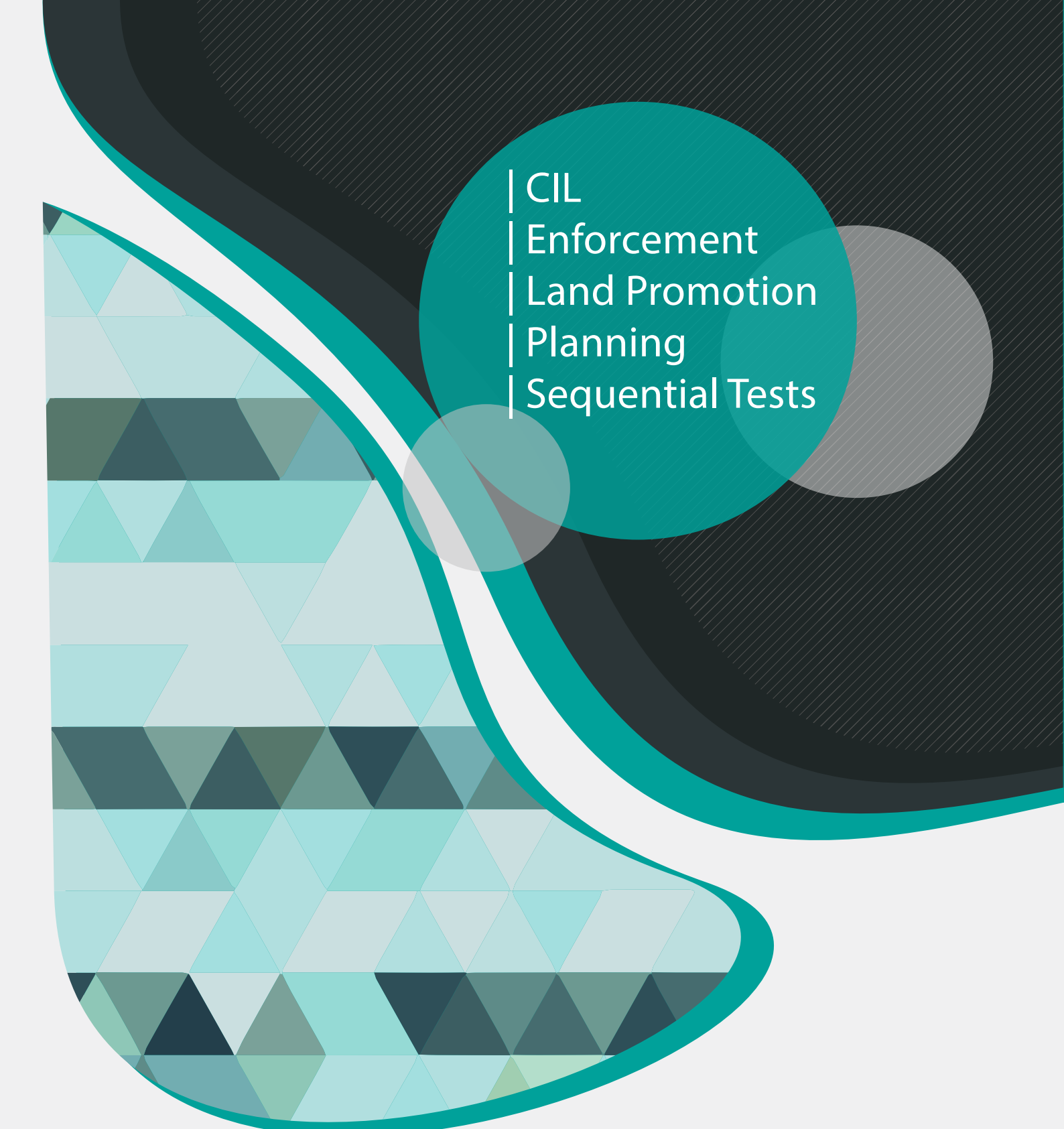
- 3.1 For the reasons outlined above, it is considered that the Council have acted unreasonably. They have failed to take into account matters such as the ministerial statement on children's homes, incorrectly assessed the material change of use and relied on vague, generalised points to support their decision.
- 3.2 It is therefore concluded that the Appellant has incurred unnecessary or wasted expense in the appeal process, as conditional approval could reasonably have been granted. It is therefore respectfully requested that a full award of costs is granted.

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