APPEAL REF: 6006971

Farm View, Langley Vale Road, Epsom, Surrey KT18 6AP

Outline application for up to 110 dwellings including affordable homes (all matters reserved except access from Langley Vale Road).

APPELLANT'S COSTS APPLICATION

Introduction

1. The Appellant seeks a full award of costs against the Local Planning Authority, Epsom and Ewell Borough Council ("the LPA").

2. The basis of the costs application is that it was unreasonable for the LPA to refuse planning permission in the face of the clear advice of professional officers, and having regard to national policy and previous Inspector's decisions.

3. The costs application was provided in outline before the Inquiry started. This submission is an updated version of that application. The substance of the circumstances which amount to unreasonable conduct remains the sae.

Background

4. The LPA is a green belt authority where the majority of land outside of settlement boundaries is subject to green belt policies. Its Core Strategy dates from 2007 and was intended to provide for development needs up to 2022. It has a 1.6 year housing land supply; a 33% HDT score reflecting persistent under delivery; and a need to deliver 652 affordable homes per annum when it has managed only a tiny fraction of that in previous years.

5. In 2022, a residential scheme for 20 dwellings was proposed at Langley Bottom Farm, to the south of the Appeal Site [CD15.1]. The Inspector identified a main issue as "whether the site is in a sustainable location with access to a choice of

modes of transport other than the private motor vehicle". The Inspector concluded that the site was not unsustainably located (paragraph 33) and that there was no material conflict with the relevant policies of the Core Strategy and NPPF (paragraph 35). In 2025, an appeal relating to a replacement dwelling as Langley Bottom Farm was dismissed [CD15.2], but the Inspector noted that the dwelling would be "in a sustainable location, close to a settlement" (paragraph 26).

6. In 2024, national green belt policy was substantially changed to introduce the concept of grey belt and to identify that certain development in grey belt locations is not inappropriate.

7. In its emerging local plan, the LPA has proposed allocating land for major residential development totalling 2125 dwellings in areas with comparable locational sustainability credentials to the appeal site [CD6.6, table 4.6].

8. In February 2026, the application was reported to the Planning Committee with a recommendation for approval [CD3.1]. The report concluded that the Site comprised grey belt land. In considering whether the proposed location was sustainable, the report said:

> "9.50. On 14 July 2022, planning permission was granted on appeal on the adjoining site (Langley Bottom Farm) for 20 residential units. This appeal site lies to the south of the application site and is lies further from Langley Vale.
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> 9.51. [One] of the main issues considered by the Inspector in that appeal was whether the site was in a sustainable location. The Inspector found that whilst the development at the appeal site would not be significant development, it would provide opportunities for residents to take up sustainable transport modes, which is the essential element of paragraph 110 of the NPPF.
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> 9.52. On 18 July 2025, an appeal was dismissed for a single dwelling at Langley Bottom Farm. In considering whether the appeal site was in sustainable location, the Inspector concluded that given the evidence before them, including the appeal decision for Langley Bottom Farm, the appeal site would be in a sustainable location.

9.53. It is well established that previous appeal decision(s) can amount to a material consideration in the determination of like cases, an officers must consider the materiality of that previous decision, and in particular the Inspector's conclusion the adjoining site is sustainable.

9.54. The current application proposes the same kind of development, in broadly the same location under the same local planning policy framework and substantially the same National planning policy framework, save that Green Belt policy has been relaxed by the introduction of Grey Belt which serves to advance a strong emphasis on the increased delivery of housing.

9.55. The significance of these facts is that in North Wiltshire District Council v Secretary of State for the Environment and Clover (1993) 65 P. & C.R. 137 the Court of Appeal held… [quote omitted]

9.56. The current proposal is significantly larger than those considered in the two recent planning appeals. However, this distinguishing feature does not directly impact on the underlying sustainability of the location. On that basis, the previous appeal decisions are material considerations in the determination of this application. The weight to be given to this material consideration is a matter for the decision maker. However, if the Council wishes to depart from the approach of the previous inspectors it must give reasons for doing so.

9.57 Against that background, Officers note the previous Inspectors findings on the sustainability of the location are not expressly contingent on the scale of the developments. [quote omitted]

9.58. The proposed development includes sustainable travel initiatives that are intended to make the application site more sustainable than it is today, notably by demand led public transport, which are credible and beneficial. Other local services and sustainable travel considerations (notably the convenience of walking and cycling) are broadly the same. Another vitally important similarity compared with the previous decision is the low level of housing land supply and under-delivery (especially of affordable housing delivery), which remains an important part of the context for the assessment of sustainability.

9.59. Viewed in the round, the conclusions reached by previous inspectors on the sustainability of the area of the appeal site, coupled with the applicant's proposals to further enhance the sustainability of the appeal site are judged by officers to constitute weighty material considerations that indicate the development meets the test of paragraph 155(c) of the NPPF. In short, it is a sustainable location. This position has been reviewed and concurred with by Counsel.

...

18.73. Paragraph 110 of the NPPF seeks new development to take opportunities to maximise sustainable transport solutions and therefore sustainability opportunities have been set out in the TA and the ESTS to promote sustainable travel modes. It is important to recognise that these improvements are proposed to enhance the sustainability, rather than make the location sustainable, as the site is already to be considered in a sustainable location for the reasons set out in Section 9 of this Agenda Report."

9. Members nonetheless refused permission [CD3.2]. Reason 1 states that the proposal is sited in an unsustainable location. Reason 2 states that the proposal comprises inappropriate development in the Green Belt. From the LPA's Statement of Case and the Statement of Common Ground, its case is that whilst the Site comprises grey belt land, it is an unsustainable location and therefore residential development is inappropriate development in the Green Belt.

10. Reason 3 relates to alleged unacceptable visual impact on the landscape setting of the Area of Landscape Value and of the wider landscape character of the countryside and Green Belt. Reason 4 related to adverse impacts on the horse racing industry, and has since been withdrawn.

<u>Unreasonable conduct</u>

11. A substantive award of costs may be made where a local planning authority unreasonably refuses planning permission. Examples in the PPG include:

"- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

...

- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner

..."

12. Reasons for refusal 1 and 2 turn on the sustainability of the location. Its Green Belt case depends entirely on that question. On this issue, the proposal should clearly be permitted. There is a need for consistency in decision-making, as recognised in the *North Wiltshire* case [CD17.11] cited in the officer's report. Inspectors have twice in the past 4 years found Langley Bottom Farm – adjacent to, but slightly more remote than, the appeal site – to be a sustainable location for residential development. The officer's report was correct to advise that there was no basis departing from those conclusions. The advice was approved by Counsel and members should have followed that advice unless they had a clear reason not to. No such reason was advanced at the committee meeting or by members. The advice has not been disclosed but as explained at the Inquiry by Mr Whitehouse, it did advise that the members follow the conclusions of the previous inspectors.

13. Moreover, since the appeal proposals would deliver improvements to sustainable transport through a substantial contribution to improved bus services, there is no rational basis to conclude that the appeal site is not sustainably located. The Appellant's closing submissions explain this in detail. Mr Dukes for the LPA accepted that these were "significant benefits" for the existing residents as well as future residents.

14. These circumstances are underscored by the reality that the LPA needs to, and is, planning for growth outside the existing settlements to meet its substantial housing shortfall. The subsequent attempt by the LPA's witnesses to justify the position adopted by members will be examined at the inquiry. For present purposes, it suffices to say that it does not provide a reasonable basis for resisting the appeal.

15. In those circumstances, it was unreasonable to refuse planning permission on the basis that the site was not a sustainable location for residential development. It was unreasonable, consequently, to conclude that the proposal was for inappropriate development in the Green Belt.

16. The question then arises as to whether the LPA was able to make good this position at the Inquiry. In short, it was not. With respect, Mr Dukes' evidence on transport matters fell well short of what would be required to support such a case. His analysis was by his own admission selective, and based on the wrong modes and/or the wrong routes. He accepted at the start of his cross examination that he was not best placed to assess these matters, and indeed that it was unusual for the highway authority to be running the Council's planning case.

17. As to reason for refusal 3, the LPA accepted that this was not a reason for refusal in its own right, through Mr Whitehouse's evidence. if it lost on the sustainable location point, the LPA would argue for permission to be granted. Whilst the concession was well made pursuing the landscape arguments was unreasonable. The LPA's reasoning turns on the site having an impact on an "area of landscape value" which forms no part of the development plan, and where the LPA accepts that the site is not a valued landscape. The former concession came only under cross examination, the AGLV designation having been relied on by the LPA in both Mr Drummond's and Mr Whitehouse's proof.

18. Reason 4 was rightly withdrawn.

Conduct

19. The application is for a full award of costs based on unreasonable reasons for refusal; it follows that conduct in the appeal is not directly relevant. However, the Appellant would wish to note that the failure of the LPA to file its closings on 13 November was unreasonable conduct, causing further wasted costs. There was a national email outage. However, there was no proposal for an extension of time, no explanation as to why alternative means of communication could not be used, and no apology for not filing on that day. The subsequent request for an extension came far too late, and did not provide a full explanation as to why any input from witnesses could not have been obtained sooner. To lay blame at the Appellant for chasing a copy of the closing – after it was overdue – misunderstands the burden on the party who has failed to comply with a direction to set the matter straight.

Costs

20. In those circumstances, the unreasonable conduct of the LPA in refusing planning permission has put the Appellant to the costs of the appeal. But for that conduct, permission would have been granted without the need to appeal. The LPA should be ordered to pay the costs of the appeal.

Richard Turney KC

Landmark Chambers

18 November 2026