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

Planning Inspectorate Appeal Ref: 6006971

Appeal by Fairfax Aspire Ltd

Response of the Council to the Appellant's Application for Costs

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1. Introduction

1. This is the response of Epsom and Ewell Borough Council ("the Council") to the application by Fairfax Aspire Ltd ("the Appellant") dated 18 November 2026 for a full award of costs ("the Appellant's Costs Application"). The Appellant's Costs Application says that the substance of its case "remains the same" as in the outline application of 2 September 2026. It does not. It goes further than the outline application and adds three new issues: about the Council's transport evidence, the pursuit of the landscape case, and the late filing of the Council's closing submissions. Although the first two are presented as part of the substantive case, each in substance concerns the conduct of the appeal. The Appellant itself accepts that conduct in the appeal is "not directly relevant" to a full award. They are answered in Sections 7, 8 and 10.

2. The Appellant's Costs Application is resisted in its entirety. In summary:
    a. members departed from the officer recommendation for clear planning reasons, grounded in the development plan and shared by the statutory highway authority, and the Council substantiated those reasons at appeal (Ground 1, covered in Section 3),
    b. the earlier Langley Bottom Farm decisions were taken into account and properly distinguished (Ground 2, covered in Section 4),
    c. whether the site is a sustainable location was a genuinely contested question of planning judgement, and the Inspector's first main issue. A transport package that brings benefits does not thereby make the location sustainable (Grounds 3 and 4, covered in Sections 5 and 6),
    d. the Council's transport and landscape evidence comfortably met the evidential threshold. Losing on a matter of expert judgement is not unreasonable behaviour, and neither complaint caused any wasted expense (Grounds 5 and 6, covered in Sections 7 and 8),
    e. RfR 4 was withdrawn in good time and with reasons, and no unreasonable behaviour is alleged in respect of it (Ground 7, covered in Section 9),
    f. the closing submissions were delayed by a global email outage, the Inspector accepted the Council's reasons, and no wasted expense is identified (Ground 8, covered in Section 10).

2. Legal and Policy Framework

The test

3. Parties normally meet their own costs. An award may be made only where "a party has behaved unreasonably" and that "unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process".[1] Both limbs must be met, and the applicant must "clearly demonstrate" how the behaviour caused the expense.[2] The Appellant has shown neither.

What counts as unreasonable

4. "Unreasonable" has its ordinary meaning, not the stricter *Wednesbury* sense. Costs do not follow the event, and a reason for refusal does not become unreasonable because the Council lost on it. The evidence need only provide "some respectable basis" for the Council's stance: evidence "not lacking real substance, which is capable of belief and which, if accepted, would be capable of making good the [planning] authority's objection"[3]. It "need not be of such substance as to persuade the inspector". Otherwise every failure to persuade would expose the loser to a finding of unreasonableness.[4] Where experts disagree, the decision-maker is likely to prefer one over the other, so the losing party's expert evidence "will not have stood up to scrutiny" but that of itself "cannot rationally be regarded as unreasonable behaviour"[5]. A party may continue to rely on its own expert in the face of a contrary opinion, and its conduct is judged as matters appeared at the time, not with hindsight.[6]

The PPG examples

5. The PPG examples relied on by the Appellant concern development that should clearly be permitted, acting contrary to well-established case law, persisting in objections that an Inspector has previously found acceptable, and not determining similar cases in a consistent manner. A genuine dispute of planning judgement does not fall within them.

Members and officer advice

6. Members are not bound to follow officers' advice, provided they have valid planning reasons and substantiate them at appeal. The PPG expects exactly that: it treats a "failure to produce evidence to substantiate each reason for refusal on appeal" as unreasonable.[7] Substantiating members' reasons at appeal is what a reasonable authority must do. It is not an after-the-event justification.

Concessions

7. Conceding or revising points at an inquiry does not make a case unreasonable. Witnesses are expected to reflect on what they hear and are entitled to change their views.

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[1] PPG, paragraph 030 .
[2] PPG, paragraph 032.
[3] R (on the application of Halton Borough Council) v The Secretary of State for Housing, Communities and Local Government [2025] EWCA Civ 1566 at 20-21. Halton concerned a called-in application, but the principles relied on here are not specific to call-ins. At [20]–[21] the Court of Appeal approved the evidential threshold in R v SSE ex p North Norfolk DC [1994] 2 PLR 78 and R v SSE ex p Wakefield MBC (1998) 75 P & CR 78. At [20] it noted that North Norfolk concerned an authority defending its own refusal of permission. The observations at [59] on contested expert evidence are of general application.
[4] R (on the application of Halton Borough Council) v The Secretary of State for Housing, Communities and Local Government [2025] EWCA Civ 1566 at 20–21.
[5] Halton at 59.
[6] Halton at 59, 54 and 44.
[7] PPG, paragraph 049.

3. Ground 1: Departure from Officer and Counsel Advice

The officer report

8. Members were entitled to reach a different planning judgement from officers. The officer report itself said that the weight to be given to the earlier appeal decisions "is a matter for the decision maker", and that the Council could depart from them if it gave reasons.[8] Officers relied on the earlier appeal decisions to conclude that the site was a sustainable location. That reliance was flawed in two respects, even under the 2024 Framework that they applied. The officer report accepted that the proposal was "significantly larger" than the earlier schemes but said that this "does not directly impact on the underlying sustainability of the location". It also treated the low level of housing land supply and under-delivery as "another vitally important similarity" with the previous decision, and as "an important part of the context for the assessment of sustainability".[9] First, scale determined whether the "significant development" test applied. Second, housing need cannot make a location sustainable[10], and Mr Brown accepted that if the sustainable-location requirement is not met, the grey belt exception is unavailable.[11] Each of these points also distinguishes the earlier decisions (paragraph 15).

The Highway Authority

9. Members did not set aside unanimous professional advice. Surrey County Council, as Highway Authority and the statutory consultee on transport, objected on sustainability grounds at every stage before the decision.[12] In August 2025 it found the site "almost entirely reliant on the private car for access".[13] Having considered the Appellant's Enhanced Sustainable Transport Strategy, it said in November 2025 that the site was "still considered to be unsustainable in transport terms".[14] In December 2025 it withdrew only its visibility objection, and maintained that the site was "located in an unsustainable location".[15] The obligations it listed in the event that permission were granted did not withdraw that objection. Mr Brown gave its view "great weight" on technical matters but disagreed for reasons that, he accepted, must withstand scrutiny against this proposal's facts. He also accepted that agreement on access and network capacity does not answer the sustainable-location question.[16] The professional advice before members was therefore divided. Preferring the statutory highway authority's assessment to the officers' overall judgement is a legitimate and clear reason for departing from the recommendation, and cannot be described as irrational.

The development plan

10. RfR 1 states that the site is in "an unsustainable location … resulting in excessive reliance upon private car usage and a lack of alternative travel options"[17], contrary to the 2024

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[8] CD3.1, paragraph 9.56, quoted at Appellant's Costs Application, paragraph 8.
[9] CD3.1, paragraphs 9.54, 9.56 and 9.58.
[10] In cross-examination, Mr Brown was taken to CD3.1, paragraphs 9.58 and 9.59.
[11] NPPF 2024, paragraph 155(b)–(c); Council closing submissions, paragraphs 5 and 99.
[12] CD7.4, paragraph 5.2 and Appendix A; Council closing submissions, paragraph 52.
[13] Surrey County Council (County Highway Authority) consultation response dated 18 August 2025: Appendix A to Mr Dukes' Proof of Evidence (Highways); see also paragraph 5.2 of that proof.
[14] Surrey County Council (County Highway Authority) consultation response dated 10 November 2025, "Summary": Appendix A to Mr Dukes' Proof of Evidence (Highways).
[15] Surrey County Council (County Highway Authority) consultation response dated 5 December 2025: Appendix A to Mr Dukes' Proof of Evidence (Highways).
[16] Mr Brown's proof, paragraph 4.14; Council closing submissions, paragraph 52.
[17] CD3.3.

Framework, Policy CS16[18] and Policy DM10[19]. Policy CS16 requires proposals to "minimise the need for travel" and to link to footways, bridleways and cycleways "so as to maximise opportunities for their use". It also requires major development to be "well located for convenient access by non-car modes", with special focus on non-car modes as in Policy TR3(1)(a). Policy DM10 addresses design requirements for new development.[20] Mr Whitehouse summarised these policies in evidence-in-chief and found conflict with both, and Mr Dukes explained those conflicts in evidence-in-chief.[21] Decisions must accord with the development plan unless material considerations indicate otherwise. Members were entitled to refuse permission for conflict with adopted policy. The parties agreed that the policies for the supply of housing are out of date.[22] That does not answer whether the site is a sustainable location, which is a separate requirement from unmet housing need as Mr Brown accepted in cross-examination (paragraph 8).[23] Mr Whitehouse gave the transport harm arising from that conflict very significant weight.[24]

Members' reasons

11. The Appellant accepts that members could depart from the officers' advice if "they had a clear reason not to", but says that "No such reason was advanced at the committee meeting or by members".[25] There was a clear reason, and it is stated in the decision notice: RfR 1 (paragraph 10 above). It was also the ground of the Highway Authority's objection before members (paragraph 9 above), and it raised the question that the earlier decisions had not answered for a scheme of this scale (paragraph 8 above). It was then substantiated at appeal (paragraph 13), as the PPG requires (paragraph 6). The Appellant understood the Council's case throughout: "its case is that whilst the Site comprises grey belt land, it is an unsustainable location".[26]

Counsel's advice

12. The officer report records only that the officers' position "has been reviewed and concurred with by Counsel". Members did not see Counsel's advice, and its substance was never presented to them. Their only knowledge of it was that reference in the officer report, and any reference to it at the committee meeting. On the Appellant's own account, the advice was to follow the earlier Inspectors, which is the same advice that the officer report gave. It therefore added nothing to the advice before members, which was the officers' advice. Members were entitled to depart from that advice for the reasons given above (paragraphs 8 to 11).

The reasons were substantiated

13. Each reason for refusal was precise and grounded in the development plan, and each was substantiated at appeal by professional evidence: Mr Whitehouse (planning), Mr Dukes (transport) and Mr Drummond (landscape).[27] That evidence was detailed, site-specific and capable of belief, and so clears the threshold set out in paragraph 4 above. The Appellant calls

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[18] Core Strategy 2007.
[19] Development Management Policies Document 2015.
[20] CD7.2, paragraph 3.14.
[21] CD7.2, paragraph 4.48; CD7.4, paragraphs 6.5–6.6.
[22] CD9.1, paragraph 5.2.
[23] CD7.2, paragraph 4.17; Council closing submissions, paragraph 5.
[24] CD7.2, paragraphs 3.10 and 6.3.
[25] Appellant's Costs Application, paragraph 12.
[26] Appellant's Costs Application, paragraph 9.
[27] CD7.2, CD7.4 and CD7.3, tested against Policies CS2, CS5, CS16, DM1, DM3, DM9 and DM10 and Framework Policies GB7(1)(g), TR3 and N2(1)(a): Council closing submissions, paragraphs 56, 90 and 104.

it a "subsequent attempt … to justify the position adopted by members".[28] Where members depart from an officer recommendation, the Council's evidence will inevitably differ from the officer report on the points of disagreement. That is how the appeal system works. It is not unreasonable behaviour. The complaint is a difference of planning judgement, which the Inspector will resolve in the appeal decision.

4. Ground 2: Previous Appeal Decisions and Consistency

Consistency with earlier decisions

14. Of the PPG examples on which the Appellant relies, three concern the earlier decisions: not determining similar cases in a consistent manner, acting contrary to well-established case law, and persisting in objections that an Inspector has previously found acceptable. None applies. The fourth, development that should clearly be permitted, is answered at paragraph 18. The Council did not disregard the earlier decisions. Mr Whitehouse treated the 2022 decision as material and gave reasons for giving it very limited weight.[29] That is what *North Wiltshire* requires. It does not require like cases to be decided alike: an Inspector "must always exercise his own judgment" and may disagree with an earlier decision, provided they have regard to consistency and give reasons. On appeal, the Inspector decides the application afresh. The principle in *North Wiltshire* applies only where the earlier case is truly alike, and the test is whether the decision-maker is "necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case".[30] Mr Whitehouse applied that test directly: the Inspector would not be disagreeing with those decisions, because this proposal is significant development in a different policy context under an updated Framework.[31] The 2022 decision is distinguishable for the reasons in paragraph 15.

The material differences

15. The 2022 decision did not answer the question that members faced. Mr Dukes was taken to the paragraphs to explain the differences in evidence-in-chief, and Mr Hamshaw was taken to the same paragraphs of the 2022 decision in cross-examination.[32] They are:
    a. **Scale**: up to 110 dwellings, against 20 in 2022 and a single replacement dwelling in 2025. The 2022 Inspector found that the 20-dwelling scheme did "not quite meet the threshold for being 'significant' development". Policy TR3(1)(a) now turns on whether a proposal "could generate a significant amount of movement".[33] Members were considering up to 110 new homes: significant development, to which the test applied.
    b. **Existing-use baseline**: the 2022 scheme replaced traffic-generating agricultural and commercial uses. The Inspector accepted that the private car would be used "for a high proportion of trips", and weighed that against the existing movements. There is no such baseline here.[34] The Appellant says that Langley Bottom Farm is "slightly more remote" than the appeal site.[35] But distance was not what decided the 2022

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[28] Appellant's Costs Application, paragraph 14.
[29] CD7.2, paragraphs 4.13–4.21; Council closing submissions, paragraphs 44–49.
[30] North Wiltshire DC v Secretary of State for the Environment and Clover (1993) 65 P&CR 137 at p.145.
[31] CD7.2, paragraph 4.21.
[32] Council closing submissions, paragraphs 44–49.
[33] CD15.1; CD15.2; CD7.2, paragraphs 4.14–4.15 and 4.22.
[34] CD15.1, paragraphs 23 and 66; CD7.2, paragraph 4.16; Council closing submissions, paragraph 47.
[35] Appellant's Costs Application, paragraph 12.

appeal: it turned on a small scheme that was not significant development and that replaced existing traffic.

c. **Qualified findings**: the 2022 decision envisaged only occasional use of infrequent buses, and recognised the limits of unlit routes and surfaces for frequent cycling.[36]
d. **Policy**: the 2022 decision was not subject to Policy GB7(1)(g),[37] and its view of sustainability was influenced by the housing supply position.[38] Under GB7(1)(g), sustainable location is a separate requirement that housing need cannot satisfy. The 2025 decision dealt with sustainability in one sentence relying on the 2022 decision.[39] Policy TR3(1)(a) of the current Framework goes further. It asks whether the movement generated is significant "in the context of the area", and whether the location limits the need to travel "particularly by private car". Neither phrase appeared in the 2024 Framework (see further paragraph 16).

The Appellant's witnesses and the new Framework

16. The Appellant's own witnesses accepted that the earlier decisions do not decide this appeal. Mr Brown accepted that they do not remove the need to assess the present proposal against TR3, which must address the movement generated by this proposal and the transport actually available to its residents, and that the earlier conclusions do not answer that question for up to 110 homes. Mr Hamshaw reasoned that the site "must" be sustainable because it adjoins Langley Bottom Farm, but his proof did not address the parts of the 2022 decision on significance and the existing-use baseline.[40] Both the officer report and the 2022 decision answered a question framed under superseded policy.[41] The appeal is decided under the new Framework. Policy TR3(1)(a) asks two questions: whether the proposal could generate a significant amount of movement in the context of the area and, if so, whether the location would limit the need to travel, particularly by private car, and offer a genuine choice of transport modes.[42] The Inspector in the Denham's Corner appeal decision (ID.11) confirmed that the question is what the measures would achieve for "a reasonable proportion of residents" on "their regular journeys" (see also paragraph 19 below).[43] This is not a new objection raised late. It reflects a change in national policy after the Statement of Case, which every party had to address.

Persisting in objections

17. The PPG example of "persisting in objections … which … an Inspector has previously indicated to be acceptable" does not apply.[44] No Inspector has considered this scheme or any element of it. This was a reasoned departure on a contested matter of judgement, in accordance with *North Wiltshire*. The Appellant's reliance on the proposed allocations is answered at paragraph 22 below. Nor is the Council repeating an objection that an Inspector has rejected. The 2022 Inspector found that the 20-dwelling scheme was not significant

[36] CD15.1, paragraphs 21 and 25; Council closing submissions, paragraph 48.
[37] CD7.2, paragraph 4.14.
[38] CD7.2, paragraph 4.17.
[39] CD7.2, paragraphs 4.14, 4.17 and 4.20; CD3.1, paragraphs 9.54 and 9.58; Council closing submissions, paragraphs 5 and 16.
[40] Council closing submissions, paragraphs 45–48; CD6.6, paragraph 4.7.4.
[41] CD3.1, paragraphs 9.47–9.49 and 9.57.
[42] Council closing submissions, paragraphs 16–17.
[43] ID.11, paragraphs 6, 34–35 and 56; Council closing submissions, paragraph 50.
[44] Appellant's Costs Application, paragraph 11. See also PPG, paragraph 049.

development.[45] In addition, in 2022 the Highway Authority did not object.[46] Here, its objection on sustainability grounds was before members when they decided (paragraph 9).

5. Ground 3: Transport Improvements and Allocations

A contested question of judgement

18. This was a genuinely contested question of planning judgement, tested with expert evidence on both sides. The Inspector identified it as the first main issue: "whether or not the proposal would be in a suitable location having particular regard to future occupiers' access to services, facilities and employment using sustainable transport modes".[47] An issue framed in that way is not one on which the proposal should clearly be permitted.[48]

The transport package

19. The Appellant's own case on the transport package is inconsistent. Officers said it would merely "enhance" an already sustainable location (a paragraph Mr Brown was taken to)[49], whereas Mr Hamshaw relied on it to make the location sustainable.[50] Officers' view was a planning judgement on which members were entitled to differ. If the package is needed, the Council was entitled to test whether it would work. If it is not, it cannot show that the refusal had "no rational basis" as the Appellant maintains.[51] In addition, the 2026 Denham's Corner decision (ID.11) confirms that the question is not simply what a package provides, but what it would achieve: genuine choice requires alternatives capable of persuading a reasonable proportion of residents to use them instead of driving for regular journeys, not merely serving those who would walk or cycle anyway. The package relied upon by the Appellant had to show how it would change travel behaviour on the routes and services actually available. The Council was entitled to test it on that basis under the new TR3 test.[52]

The bus contribution

20. The Appellant's Costs Application relies on Mr Dukes' acceptance that the bus contribution would bring "significant benefits" for existing and future residents, and says that there was therefore "no rational basis" for finding the site unsustainably located. That does not follow. The Council has never disputed that the package brings benefits, and its closing submissions call them real improvements.[53] The question was whether, after them, the location would limit reliance on the car and offer genuine choice. Mr Dukes' acceptance was consistent with his proof, which recognised the benefits of the bus contribution but said it was by no means clear that the service would be commercially sustained.[54] The Highway Authority said that such a service would need to be "provided in-perpetuity", a point Mr Dukes repeated in cross-examination, but the contribution lasts five years, and Mr Hamshaw accepted that continuation of service could not be guaranteed.[55]

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[45] CD15.1, paragraph 31; Council closing submissions, paragraph 46.
[46] CD15.1, paragraph 60.
[47] Post-CMC Note, 22 June 2026, paragraph 7, recorded at CD7.2, paragraph 2.6.
[48] PPG, paragraph 049.
[49] CD3.1, paragraph 18.73, quoted at Appellant's Costs Application, paragraph 8.
[50] CD3.1, paragraph 18.73; CD6.6, paragraph 6.2.1; CD6.10, paragraph 1.1.3; Council closing submissions, paragraph 18.
[51] Appellant's Costs Application, paragraph 13.
[52] ID.11, paragraphs 34–36 and 49; Council closing submissions, paragraphs 41–43 and 50.
[53] Appellant's Costs Application, paragraph 13; Council closing submissions, paragraphs 35 and 56.
[54] CD7.4, paragraph 5.24
[55] CD7.4, Appendix A (response of 10 November 2025); Council closing submissions, paragraph 39.

The Council's concerns

21. The Council's concerns were substantive and evidenced. They concerned the gradients, narrow footways and unbound, unlit surfaces of the walking routes to Epsom and Tattenham Corner. Station access rested on cycling alone, via a route that is incomplete and not continuously surfaced. Bus funding was limited to five years. The e-bike vouchers, the car club and the Travel Plan had only a limited ability to overcome those constraints.[56]

Allocations

22. Mr Hamshaw accepted that comparison with proposed allocation sites cannot replace the exercise of assessing the sustainability of the appeal site, and the comparator categories differ.[57] Proposed allocations are tested through the local plan process on their own evidence. The emerging plan is at examination, and its contested policies carry only limited weight.[58] The allocations do not show that the Council acted inconsistently or irrationally.

Conclusion on Ground 3

23. The Council's concerns were arguable and were based on relevant planning policies as set out in its Statement of Case. Qualified experts disagreed, the Highway Authority maintained its objection, and the Appellant's own witnesses accepted key points.[59]

6. Ground 4: Green Belt (RfR 2)

24. The Council narrowed its Green Belt case. It accepted grey belt status, unmet housing need, and that the proposal would not fundamentally undermine the purposes of the remaining Green Belt. Subject to obligations, the Golden Rules were not a separate objection.[60] Housing need and sustainable location are separate requirements of Policy GB7(1)(g).[61] If the sustainable-location case was reasonable, RfR 2 follows from it.
25. Mr Brown accepted in cross-examination that, if the proposal is inappropriate development, harm by inappropriateness, harm to openness and conflict with purpose (c) arise, and attract substantial weight.[62] The Council's approach to Green Belt, grey belt, the Golden Rules and sustainability was reasonable.

7. Ground 5: The Council's Transport Evidence

The evidential threshold

26. The Appellant says that the Council was not able "to make good this position at the Inquiry" and that Mr Dukes' evidence "fell well short". That is not the test. The question is whether his evidence was capable of belief and, if accepted, capable of making good the objection as set out in paragraph 4 above. The Council's position is that it was, as set out in its closing submissions.

Choice of routes

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[56] Council closing submissions, paragraphs 25–29 and 37–42.
[57] Appellant's Costs Application, paragraphs 7 and 14; Council closing submissions, paragraph 51.
[58] CD7.2, paragraph 3.3.
[59] Council closing submissions, paragraphs 18, 28, 39, 45 and 51.
[60] Council closing submissions, paragraph 3.
[61] Council closing submissions, paragraph 5.
[62] Council closing submissions, paragraphs 10–14; CD9.1.

27. The Council resists the Appellant's claim that Mr Dukes' analysis was "selective" and "based on the wrong modes and/or the wrong routes". Mr Dukes assessed the routes that matter: the walking and cycling routes to Epsom and to Tattenham Corner, including direct routes and the traffic-free bridleway alternatives. He accepted that destinations within the village were walkable, and the Council narrowed its case accordingly. His concern was the quality of the onward routes for regular journeys (gradient, footway width, surfacing and lighting) for all users, including people with mobility impairments and older people. On the bridleway route to Tattenham Corner, he measured a 500-metre stretch rising 32 metres, steeper than the maximum recommended by Inclusive Mobility. Mr Hamshaw described the same incline as suitable for "most people", and accepted that he did not expect residents to walk to Tattenham Corner station, relying on cycling instead. That is a disagreement between experts about routes on which both relied. It is not selectivity.

The Connectivity Tool and the healthcare image

28. The Connectivity Tool comparison and the healthcare image were acknowledged openly and, as noted in closings, the Council did not rely on them.[63] Both went only to the starting point. Mr Hamshaw used the same score of 42 and placed the site in the bottom 30% of its category. Both experts said the tool is only a starting point, and Policy TR3(2) now requires it to be used "alongside other relevant quantitative or qualitative evidence".[64] That qualitative evidence, measured and photographed on the ground, is what Mr Dukes provided.

Mr Dukes' role

29. The Appellant says that Mr Dukes accepted that he was "not best placed to assess these matters". It also says that he accepted it was unusual "for the highway authority to be running the Council's planning case". The Highway Authority was not running the Council's planning case: Mr Dukes gave the transport evidence, and Mr Whitehouse gave the planning case. Whether or not it is unusual for the Highway Authority's officer to give evidence for the Borough Council, it is not unreasonable. The PPG expects a statutory consultee to substantiate its advice at appeal, and recognises that an authority that has placed significant weight on that advice may ask the consultee to attend the inquiry. The Highway Authority is the statutory consultee whose objection was before members (paragraph 9). In cross-examination, Mr Hamshaw accepted that the Highway Authority's remit includes transport sustainability, not just highway safety and capacity, and that its continuing sustainability objection therefore cannot be dismissed as a matter outside its transport remit. The Appellant's own transport witness thus accepted that whether the site is a sustainable location was squarely within the Highway Authority's remit, and so within Mr Dukes'. Mr Brown likewise gave the Highway Authority's objection "great weight" on technical matters (paragraph 9 above). Mr Dukes is the Principal Transport Development Planning Officer for the area and a Member of the Chartered Institution of Highways and Transportation, with a master's degree in transport planning and 14 years' experience. Matters outside Mr Dukes' remit were for Mr Whitehouse, and caused no additional expense. The Appellant cannot rely on Mr Dukes' evidence when it helps ("significant benefits") and dismiss it when it does not.

No wasted expense

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[63] Council closing submissions, paragraphs 20–21 and 53.
[64] CD6.6, paragraphs 4.6.2–4.6.8; CD7.4, paragraphs 4.14 and 4.16; NPPF 2026, Policy TR3(2); CD6.10, paragraph 2.1.6.

30. The qualified points on which the Appellant relies, including the Connectivity Tool comparison and the photograph of the point where the route to Tattenham Corner crosses the racecourse, took a few questions each, Mr Dukes accepted them at once, and the Appellant needed no rebuttal evidence on them. Mr Hamshaw's supplementary proof dealt with the new Framework.[65] The Appellant had to call transport evidence in any event, to answer the Highway Authority's objection and to support its own reliance on the transport package. It identifies no expense caused by any part of Mr Dukes' evidence.[66]

8. Ground 6: Landscape (RfR 3)

Mr Drummond's evidence

31. RfR 3 is supported by Mr Drummond's evidence of significant residual landscape and visual effects, including on UE3 Epsom Downs, the setting of Langley Vale, Centenary Wood, Bridleways 33 and 146, Footpath 32 and Langley Vale Road.[67] That evidence was robust and helped the Inspector to understand the issues.
32. Mr Drummond's concessions have been addressed in closings (site character from major to moderate adverse, CF3, Viewpoint 12) and were candid and narrowed the issues, while the Council's concerns about western planting, building heights and summer-only photomontages remained legitimate.[68]

Mr Whitehouse's concession

33. The Appellant says that, once Mr Whitehouse accepted that RfR 3 was not a freestanding reason for refusal, "pursuing the landscape arguments was unreasonable". Mr Whitehouse's acceptance that RfR 3 was not a freestanding reason correctly stated the policy.[69] If the GB7(1)(g) exception applied, landscape harm alone would not justify refusal. If it did not, landscape harm formed part of the "any other harm" in the very special circumstances balance. That was the Council's case from the outset, in its Statement of Case and in Mr Whitehouse's proof.[70] The question put to him assumed a scenario that was not the Council's case. The complaint has also changed.[71] The outline application said only that it would be unreasonable for the Council to "stand by" RfR 3 if it lost on sustainable location, because the impacts could not "substantially outweigh" the benefits. The Council did not stand by RfR 3 on that basis, and the Appellant accepts that "the concession was well made". The Appellant now claims instead that pursuing the landscape case at all was unreasonable. But the Statement of Case made clear from the outset that landscape harm was "other harm" to be weighed in the very special circumstances balance.[72]

No wasted expense

34. Pursuing the landscape case caused no wasted expense. Landscape and visual effects had to be assessed in any event, for openness, purpose (c) and the very special circumstances

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[65] CD6.10.
[66] PPG, paragraph 032.
[67] CD7.3; Council closing submissions, paragraphs 57–89.
[68] Council closing submissions, paragraphs 65, 68, 71 and 80–87.
[69] Appellant's Costs Application, paragraph 17.
[70] CD7.1, paragraph 6.16; CD7.2, paragraphs 4.47, 4.59, 6.3 and 6.5; Council closing submissions, paragraphs 90 and 99–102.
[71] CD18.5, paragraph 15.
[72] CD7.1, paragraphs 6.16 and 6.28.

balance.[73] Mr Brown himself accepted that, in his alternative case, the effect on openness had to be assessed, including spatial and visual harm to openness and the impact on purpose (c), and that the development would introduce built form into existing open views.[74]

"Area of landscape value"

35. The Appellant says that RfR 3 turns on an "area of landscape value" which "forms no part of the development plan". That mischaracterises RfR 3. It states that the proposal "will have an 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". RfR 3 does not turn on the AGLV alone. The Council's evidence therefore addressed landscape and visual harm beyond the AGLV, to the wider landscape character of the countryside and Green Belt, as RfR 3 required (paragraph 31 above). The Council's case did not depend on the site being a valued landscape. RfR 3 relies on Policies CS5, DM9 and DM10. The reference to the AGLV came from the officer report, which recorded it as a "County designation" and itself found that the proposal "would weaken the distinctive landscape quality of the AGLV". Members and officers differed only on weight. The Statement of Case used the officer report's own words: the harm would "weaken the distinctive landscape quality of the AGLV". Mr Drummond described it as "not a protected landscape" and of "medium value", the value given by the Appellant's own LVIA, and the proofs used the term to identify the landscape affected. Mr Whitehouse explained its limited status in the emerging plan in evidence-in-chief, before cross-examination. Reasons for refusal are to be read fairly and as a whole, in ordinary language rather than as a legal instrument. Read in that way, RfR 3 is about landscape character and visual harm, which Policy N2(1)(a) now expressly requires decision-makers to consider.

9. Ground 7: Withdrawal of RfR 4 (Horse Racing)

36. The Appellant's Costs Application does not allege that RfR 4 was unreasonable. It says only that RfR 4 was "rightly withdrawn".[75] As the Appellant's Costs Application seeks a full award, RfR 4 is addressed briefly.

The basis for the concern

37. During consultation, the Jockey Club wrote to the Council raising serious concerns about the effect of traffic on the movement of horses. Shortly before the committee meeting, the Epsom Racehorse Trainers' Association wrote further, copying every member of the Planning Committee. Members also drew on their local knowledge of the horse racing industry and on material at the Local Plan examination, including a draft policy intended to support and revitalise that industry. They considered that the proposal could adversely affect equine interests associated with Epsom Downs and local livery yards, including through conflict with existing horse movements on Langley Vale Road. RfR 4 recorded that concern: the proposal "will lead to an increased conflict with existing movements of horses on Langley Vale Road, posing unacceptable conflict and impediment to vehicular traffic and risks to horses, trainers and riders", contrary to Section 9 of the 2024 Framework and Policies CS16 and DM10. The concern was raised by the industry bodies most directly affected, and there was a genuine and reasonable basis for it when the decision was taken. Members were entitled to give weight to

[73] Council closing submissions, paragraphs 10–14.
[74] Council closing submissions, paragraphs 10–11.
[75] Appellant's Costs Application, paragraph 18. See PPG, paragraph 047.

the representations of the bodies with direct, day-to-day knowledge of horse movements on Langley Vale Road. Those representations were material considerations, not general objections.

Review and withdrawal

38. The Statement of Case set out the basis of that concern, including the limits of the Appellant's Transport Assessment on equestrian impact and on Bridleway 127.[76] In preparing for the inquiry, the Council reviewed whether the evidence was robust enough to maintain the concern as a standalone reason for refusal. In particular, the relatively small number of horse movements meant that it could not substantiate the alleged adverse effects sufficiently to justify dismissal of the appeal on that basis alone. On 4 August 2026 it told the Inspectorate and the Appellant that it would not defend RfR 4, subject to conditions. The Council's position is that this review and the resulting decision were undertaken in a timely and proper manner. This avoided further expenditure by any party in preparing to contest that reason. The decision not to defend the reason does not, of itself, establish that the original concern was unreasonable or that the Council caused unnecessary or wasted expense. The Council continued to defend RfR 1–3. Any claim for costs on this reason would have to identify both the unreasonable conduct and the expense it caused, and the Appellant does neither. It cannot support a full award.

10. Ground 8: Filing of Closing Submissions

Relevance to a full award

39. The Appellant accepts that conduct in the appeal is "not directly relevant" to its claim for a full award.[77] This ground cannot support one.

The standard of conduct expected of all parties

40. The PPG expects "all parties" to "behave reasonably at all stages of the planning and appeal process".[78] The costs regime encourages all those involved "to behave in a reasonable way and follow good practice".[79] That applies to appellants as much as to local planning authorities: for both, "lack of co-operation with the other party or parties" is an example of unreasonable procedural behaviour.[80] The Council's conduct on 13 and 16 November must therefore be judged alongside the Appellant's, and in the light of "any extenuating circumstances".[81]

The outage

41. The closing submissions were not filed on 13 November 2026 because of a global email outage, as the Appellant acknowledges. Both the UK Government and PINS recognised the extent of disruption. For example, PINS paused its appeals service due to the worldwide Microsoft outage.[82] This was not an internal Council failure.

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[76] CD7.1, paragraphs 6.21–6.24.
[77] Appellant's Costs Application, paragraph 19.
[78] PPG, paragraph 007 .
[79] PPG, paragraph 028 .
[80] PPG, paragraphs 047 and 052 .
[81] PPG, paragraphs 046 and 051.
[82] Planning Inspectorate service notices, 13–16 November 2026. The Government described the outage to Parliament as a "serious incident".

What the Council did

42. Missing a deadline is not the test. The question is why it happened, what the party did, and what effect it had, taking account of any extenuating circumstances.[83] On Friday 13 November, from about 8am, the Council was in contact with the Appellant and the Rule 6 party to find a way forward. Counsel explained by telephone and WhatsApp that emails from the Council and its witnesses were not arriving: comments had been received from only one witness, the Council officer had received no emails at all, and both witnesses were out of the office and could not be reached by other means. Counsel for the Appellant insisted that counsel for the Council file anyway. However, closing submissions cannot properly be finalised without the input of the witnesses whose evidence they address. At about midday counsel telephoned the Inspectorate, which confirmed that it was experiencing the same problems, that the outage was global, and that it could not say when it would be resolved. At about 1pm, counsel proposed by WhatsApp that, given the uncertainty, it would be sensible for the parties to agree a new timetable on Monday, once systems were restored. The Appellant declined, saying that it could not agree an extension until Monday. The second witness's comments arrived at 7am on Monday, and counsel wrote to the Appellant at about 8am. The Inspector accepted the Council's reasons. The Council regrets the disruption the outage caused to all parties.

The timetable

43. The Appellant's own email to the Inspector accepted that it would "inevitably" seek an extension of its own deadline. It then proposed Wednesday 18 November for its closings and the Appellant's Costs Application, and the Council did not object. The Appellant gained three working days, while the Council accepted less time to respond when compared with the original timetable. Counsel for the Council agreed to allow the appeal to proceed co-operatively, and rearranged other professional commitments to meet the revised timetable, recognising that all parties had been affected by the outage. The Appellant recognised that the timetable would need to move. Its complaint is not that the timetable changed, but that it changed for the Council.

44. On the Friday afternoon, the Appellant also asked the Inspector to direct that the Council should make no further submissions if closings are not received by 6pm. It did so by email, which the Council could not then receive, and without raising it on the WhatsApp channel that it had described as "effective". That direction would have been wholly disproportionate. It would have shut the Council out of closing on the main issues altogether, as a sanction for a short delay caused by a global outage that had also halted the Planning Inspectorate's own systems. Whether to accept late material is for the Inspector, in the interests of natural justice and fairness, and a party must have a fair opportunity to put its case.[84] It was therefore disappointing to find, on reading the emails on Monday morning, that while the Council's counsel was explaining the problem by telephone and WhatsApp, the Appellant had asked the Inspector, by a channel it had been told was not working, to prevent the Council from putting its case at all. It came at a time when the Council's counsel was asking, on WhatsApp, to find a co-operative way forward, recognising that the outage was affecting both parties' personal

[83] PPG, paragraphs 031 and 046.
[84] Procedural Guide, paragraph 11.13.4.

and professional commitments. The Appellant's approach sits uneasily with an application that criticises the Council's conduct of the appeal.

What the Inspector was told

45. The Appellant's emails to the Inspector did not give an accurate account of the position. They said that the Council had not "indicated when it will submit them", and that no explanation had been offered "beyond reliance on the now resolved email issues". In fact, the Council had explained the difficulty by telephone and WhatsApp and had proposed agreeing a new timetable on Monday. Nor had the email issues been resolved: the second witness's comments arrived only at 7am on Monday, and the Inspectorate kept its own service paused over the weekend. The Appellant's Costs Application repeats the same complaints. Each is answered by the contemporaneous record. (a) There was a proposal to extend time: on Friday the Council proposed agreeing a new timetable on Monday, and the Appellant refused. (b) Alternative means of communication were used: counsel spoke by telephone and corresponded by WhatsApp, which the Appellant itself described as having "proved effective". The difficulty was not communication between counsel, but that the Council's witnesses could not be reached. (c) An apology is not part of the costs test. (d) The request for an extension was not "too late": counsel emailed at about 8am on Monday. (e) The explanation was given to the Appellant on Friday, to PINS on Friday and to the Inspector on Monday, and the Inspector accepted it. (f) The Council does not criticise the Appellant for asking when the closings would arrive. Its concern is that, without telling the Council, the Appellant asked the Inspector to exclude them altogether.

No wasted expense

46. The Appellant had to read and respond to the Council's closings in any event. The work was not wasted. Time spent waiting for the closings is not wasted expense, and diary disruption is akin to the indirect losses that the PPG excludes.[85] The Appellant claims "further wasted costs" while also seeking all the costs of the appeal, but identifies none.[86] The Appellant must "clearly demonstrate" how any unreasonable behaviour caused such expense, and "awards cannot extend to compensation for indirect losses".[87] It has not attempted to do so. Indeed, the revised timetable gave it three additional working days to prepare its closings and its Costs Application. The Council did not object, although it had less time to respond and rearranged other professional commitments to do so, recognising that everyone had been affected by the disruption, both personally and professionally.

11. Conduct of the Appeal

47. The Council conducted the appeal reasonably. It agreed Planning, Landscape and Transport Statements of Common Ground, narrowed the issues (grey belt, housing need, the Golden Rules, and no highway capacity or safety objection), and openly qualified its evidence where needed.[88]

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[85] PPG, paragraph 032; Procedural Guide, paragraph 3.2.2. The Procedural Guide's warning about late documents (paragraph 11.15.5) does not displace that test.
[86] Appellant's Costs Application, paragraphs 19–20.
[87] PPG, paragraph 032 (Reference ID: 16-032-20140306).
[88] CD9.1, CD9.2 and CD9.6; Council closing submissions, paragraphs 3, 16, 20–21 and 53.

12. No Unnecessary or Wasted Expense

48. The claim for a full award rests on the bare assertion that, "but for that conduct, permission would have been granted", without particulars.[89] If the reasons for refusal were reasonable, the claim fails at the first stage.
49. In any event, the appeal could not have been avoided. RfR 1 and RfR 2 alone required it, and the Highway Authority's objection stood independently of the Council. The Appellant would have needed planning, transport and landscape evidence whatever view was taken of RfR 3. Expense that would have been incurred anyway is not unnecessary or wasted. Even if one element of the Council's case were found unreasonable, that would not show that permission would have been granted. Grounds 5 to 8 concern, in substance, the conduct of the appeal and could support at most a partial award, and the Appellant identifies no expense they caused.

13. Conclusion

50. The Council exercised legitimate planning judgement. It gave clear reasons, grounded in the development plan and shared by the statutory highway authority. It took the earlier decisions into account and explained why they do not determine this appeal, and substantiated each reason with professional evidence. Its transport and landscape evidence was capable of belief, it withdrew RfR 4 in good time with reasons, and the late filing of its closings was caused by an outage outside its control. No unreasonable behaviour causing unnecessary or wasted expense has been shown.
51. The Inspector is respectfully invited to refuse the application for costs.

Sophia Spencer
St John's Chambers
20 November 2026

[89] Appellant's Costs Application, paragraph 20.