

This is Knowsley Metropolitan Borough Council's response to the written application by the appellant, Taylor Wimpey, for an order that the Council do pay its costs of the appeal. The application was submitted early on after the hearing had opened and the inspector allowed 7 days after the close of the hearing for the Council to submit a written response

The Council accepts and acknowledges that in the application the appellant has correctly stated the policy as regards costs awards, but emphasises that normally each party to an appeal is expected to pay their own costs. Only if one party is determined by the inspector to have acted unreasonably in a manner that has caused another party to incur costs that it should not have incurred should an award be made.

The costs application has two aspects, one substantive, one procedural.

Substantive (Unsubstantiated reason for refusal)

The appellants wish to make the case that the Council's refusal is 'Vague, generalised or inaccurate and unsupported by evidence' (Paraphrase from the NPPF). That is rejected.

To take as a starting point the fact that officers recommended permission and concluded that the development would not have an unacceptable impact on highway safety is to ignore the background to the highway issues.

It is common ground that speeds along Chapel Lane are excessive if a junction that is designed for speeds of 30mph is to be acceptable. This conclusion comes from not only the appellant's own technical research and a similar exercise undertaken by the Council, but also from the empirical observations of residents and others who use Chapel Lane. Contrary to what is stated in the application, Active Travel England noted that the road offers a hostile environment. All of this was before Members. In addition, Members took the opportunity to visit the site and experience the vehicular traffic and pedestrian environment first hand. This of itself would amply justify refusal on highway safety grounds.

This 'base' having been established and agreed, the question then moves on to what, if anything, can be done to make the proposals acceptable in highway safety terms.

It is important to point out that at no point in the process, and certainly not during the hearing, was it suggested that the advantages that would come from the proposal, essentially a substantial amount of needed residential accommodation, would carry such weight that any concerns or objections relating to highway safety could be overridden.

Therefore, the crucial question is 'Can speed along Chapel Lane and other shortcomings of that road be sufficiently addressed?'

Broadly speaking, traffic calming has been proposed as the solution. Whilst what that *might* consist of has been discussed, a settled scheme has not been achieved. It follows that Members were asked to reach a decision on whether a scheme, any scheme, could achieve the desired result of reducing speeds so that junction arrangements become safe and adequate. This is not a simple mathematical or technical process.

It is of course right that Council Officers should strive to resolve issues such as these and clearly that is what has happened here, but the appellants are suggesting that what Council Officers have agreed

with the appellant is unarguably a complete solution to the problem. Leaving aside the fact that at the moment the traffic calming proposals lack detail, the costs application overstates the situation.

Members had ample evidence before them of a problem and only a broad framework as a solution. They were not convinced. As the hearing progressed, it must have become clear that whatever is proposed is likely to leave some issues, like footway 'pinch points', unaddressed but also that it is far from clear that sufficient traffic calming measures, given the nature of traffic that may use this road, can be devised to successfully reduce speeds to the point where the junction proposals become acceptable. Notwithstanding the technical ability and expertise of the Council's officers, it remains their opinion that a traffic calming scheme can be devised that will work. This costs application is predicated on a conclusion that it unarguably will work and that any other view is patently wrong and unreasonable. That is a conclusion one cannot reach on the basis of the evidence, so whether or not the appellant's proposals are accepted it was perfectly reasonable for the Council to refuse permission on the grounds that it did and to defend that position on appeal and at the hearing.

'...capable of being dealt with by conditions...'

For the sake of completeness, this criticism is rejected for the reasons above. In short, if the Council are not convinced that a scheme of traffic calming can achieve the safety results necessary then granting permission subject to a condition that the Council believes cannot be fulfilled would in itself be unreasonable.

The application on these grounds should therefore be refused

Procedural Delays

There is little merit in this part of the application.

The first paragraph under "*delay in providing etc...*" is no more than a re-working of the substantive application. It appears to suggest that from the very start traffic calming was accepted; that is not true. There was a long and detailed process involving collection of traffic and speed data and assessment of the consequences. There is nothing procedurally wrong evidenced here.

As regards the second paragraph, the Council are effectively being criticised for trying to move the process forward expeditiously by having faith in the ability to devise a suitable calming scheme and therefore not requiring the appellant to incur significant cost and delay in working up details which would then have had to be consulted on with various interested parties before the matter could be considered as ready for a decision. This is a disingenuous criticism that is roundly rejected by the Council. Its efforts to help are being thrown back in its face.

As regards the Statement of Common Ground (SoCG), whilst the appellant's efforts to reach a settled document early are commendable, the fact that the Council did not feel able at the time to respond to those efforts cannot possibly justify an accusation of failing to act in a timely manner such that the appellant incurred costs that it should not have incurred.

The initial 'deadline' for the SoCG was 6th July; it is simply unreasonable to expect a busy planning department to devote resources between the preceding March and May to a document not due for many weeks if not months. We are not aware of any specific and detailed guidance that suggests otherwise.

The numbered paragraphs from 6 onwards and the attached documentation merely document what is a normal process of working towards a SoCG. Whilst requests were made, and granted, for deadlines to be extended, at no time did the appellants protest those extensions or accuse the Council of causing it additional costs as a result. It was entirely the appellant's decision to chase responses at a time when

such responses were not critical and it must be concluded that this was done entirely for the appellant's convenience. There is nothing in the Council's actions that remotely justifies an award of costs.

As regards the mooted Unilateral Obligation, if any criticism can be made of the Council it was in exploring with the appellant a 'solution' proposed by the appellant that was never going to be acceptable. It has always been the Council's case that because of the undetermined nature of any calming measures a condition was the appropriate solution should the permission be granted or the appeal allowed. The Unilateral Obligation issue was not pursued at the hearing, but if it had been this would have raised questions regarding the ability of the Inspector to take account of an obligation that would have failed the tests in Regulation 122 of the Community Infrastructure Levy Regulations as it would have been impossible to determine that the sums involved were entirely fairly and reasonably related to development proposed. It was the appellant's choice to pursue this; there is no conduct on behalf of the Council that can be characterised as unreasonable in this respect.

In any event, for an award to be made the Inspector must not only be convinced that the conduct was unreasonable but that it has resulted in expense that should not have been incurred. It is submitted that any expense incurred by the appellants in this regard is no more than any appellant in this sort of case would expect to incur.

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For and on behalf of Knowsley Metropolitan Borough Council

28th September 2026