The Planning Inspectorate

# Costs Decision

Site visit made on 14 December 2021

**by Paul Martinson BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 March 2022**

**Costs application in relation to Appeal Ref: APP/Y2003/W/21/3280156**
**Brookside Caravan Park, Stather Road, Burton-upon-Stather DN15 9DH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Chris Barrett for a full award of costs against North Lincolnshire Council.
- The appeal was against the refusal of planning permission for a development described as: 'change of use of land to permit the siting of static caravans (resubmission of PA/2020/276).'

## Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

## Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.

3. The PPG[1] makes clear that local planning authorities are at risk of a substantive award of costs if they fail to produce evidence to support each reason for refusal on appeal, or if they persist in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.

4. The applicant's case for a full award of costs is that the Council issued an unsubstantiated refusal. The first reason for refusal related to the effect of the proposal on the living conditions of occupiers of the neighbouring properties. In this regard, the applicant alleges that the Council Planning Committee ignored the comments of the previous Inspector who found that a previous proposal 'would not have a significant adverse effect' on the living conditions of those nearby. The Council has not commented directly on this matter in their response to this costs application.

5. The proposal being considered by Members was essentially the same as that which was considered by the previous Inspector (insofar as relevant to the issue of living conditions is concerned)[2]. I have been provided with no evidence

[1] Reference ID: 16-049-20140306
[2] Ref APP/Y2003/W/20/3257186

of any substantial differences, particularly with regard to the effect on living conditions and the number of vehicle movements generated. The PPG is clear in that persisting with objections to a scheme which an Inspector has previously indicated to be acceptable amounts to unreasonable behaviour.

6. I acknowledge that the Council's Planning Committee determined that planning permission should be refused, contrary to the officers' recommendation. While the Planning Committee is not duty bound to follow the advice of its officers or consultees, if a different decision is reached the Council has to clearly demonstrate why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. For the above reasons, I am not satisfied that the Council provided evidence which substantiated its first reason for refusal.

7. With regard to the second reason for refusal in respect of protected species, the applicant alleges that the Council failed to adequately demonstrate reasons for taking a view that directly contradicted with that of the Council's own ecologist and Natural England. I disagree with this assertion as the Council's Ecologist's response clearly highlights concerns with regard to the detail of the proposed mitigation. Furthermore, Natural England does not comment specifically on protected species and instead refers the Council to its standing advice (which also highlights areas of potential concern as reasoned in my appeal decision). I therefore find no unreasonable behaviour by the Council in this respect. Its position was a legitimate exercise of planning judgement.

**Conclusion**

8. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to the Council's first reason for refusal in respect of an issue that had previously been found to be acceptable by an Inspector. The applicant has thus been faced with the unnecessary expense in defending that matter at appeal. Whilst the appellant has not precisely enumerated the expense incurred in that regard, the PPG explains how costs may include 'the time spent by appellant and their representatives' at appeal. Thus, no doubt some costs have arisen.

**Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Lincolnshire Council shall pay to Mr Chris Barrett, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in responding to the Council's first reason for refusal with regard to the effect on the living conditions of the occupiers of neighbouring properties, such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to North Lincolnshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Paul Martinson*

INSPECTOR