



Costs Decision

Hearing Held on 17 January 2023

Site visit made on 18 January 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2023

Costs application in relation to Appeal Ref: APP/X2600/W/22/3305638 Kirby Cane Quarry, Leet Hill, Yarmouth Road, Kirby Cane, Norfolk NR35 2HJ

- 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 Lyndon Pallett of L P Pallett Quarry Ltd for a partial award of costs against Norfolk County Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an application described as Use of part of the existing quarry for the recycling of CDE waste and soils for a temporary period until 31/12/2025.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr Lyndon Pallett of L P Pallett Quarry Ltd

2. The appellant is of the view they have been put to unnecessary and wasted expense by the Council because it failed to substantiate its reason for refusal, as it did not technically assess the effect of the proposal upon the highway and transportation network. Instead, the Council decided to rely upon advice that blindly applied design guidance which did not reflect the true effect of the proposal having regard to the appellant's factual evidence.

The response by Norfolk County Council

3. The Council considers the advice upon which it relied from the Highway Authority (HA), fully assessed visibility at the junction having regard to highway safety and maintaining public safety. Moreover, it acted expediently to notify the appellant that the objection from the HA had been withdrawn as a consequence of third party works in the visibility splay of that junction.

Reasons

4. The 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 wasted or unnecessary expense in the appeal process. Paragraph 16-049-20140306 of the PPG states that examples of unreasonable behaviour include failure to produce evidence to substantiate reasons for refusal, and vague, generalised, or inaccurate assertions about a proposal's impact.

5. In accordance with HA advice the Council maintained that it was necessary to provide a visibility splay for 43m at an 'X' distance of 2.4m (or a minimum of 2m) at the highway junction of Old Yarmouth Road and Church Road, having regard to guidance in Manual for Streets (MfS). The appellant's view is the available 48m visibility at an 'X' distance of 0.8m is adequate due to the nature of vehicles that would result from the development having regard to guidance within MfS2. The proposal could result in between 14 and 32 additional fixed body HGV movements per working day. Around half (outgoing) would rely upon the splay in question to turn right, which has been used by vehicles from the quarry for a significant number of years.
6. Paragraph 10.2.5 of MfS2 advises the distance between the driver and vehicle front can be up to 2.4m. While an X distance of 2.4m should usually be used, paragraph 7.7.6 of the appellant's extract states this is for cars. MfS advises the minimum of 2m referred to should only be used in some slow speed situations when flows are low as the front of some vehicles will protrude slightly onto the running carriageway. The appellant provided detailed evidence in respect of this matter with the application¹. There is nothing before me to suggest the proposal would result in an increase in cars using the junction. All additional movements would be fixed body rigid HGVs where the driver is elevated significantly higher and further forward.
7. The typical dimensions, driver seating position and cab visibility are set out in the appellant's evidence accompanying the application, including detailed research by Loughborough University as to the HGV driver viewpoint. The evidence demonstrates that having regard to the acceleration heel point, typical eye positions for population percentiles, driver viewpoint and natural pivot, that an X distance of 0.8m would be adequate. The appellant's analysis appears robust and based upon credible research, and there is no substantive evidence demonstrating it is incorrect.
8. Paragraph 10.5.9 MfS2 recommends that unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem. There is no evidence before me that suggests local circumstances, such as accident records for the last 5 years, justify a view the proposal would result in significant problems. Paragraph 111 of the National Planning Policy Framework (2021) (the Framework) states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. There is no evidence demonstrating this would be the case.
9. Moreover, at the Hearing the Council informed me the area of land in question was in the public highway and under the control of the HA, so a Grampian planning condition would not be necessary to retain a splay. Therefore, even if the appellant's splay was not acceptable, and having regard to HA concerns about driver visibility over the hedge, it is not clear why such a condition could not have been imposed as a solution to this issue.
10. As the Council's professional adviser and the authority with the objective of maintaining public safety on the highway, the Council gave the view of the HA significant weight in reaching a view on the proposal. However, the Council appears not to have fully assessed and given adequate weight to the detail and

¹ Letter from Doyle Transport Planning dated 13 September 2021.

substance of the appellant's evidence. As a consequence, it has failed to adequately substantiate the highway safety reasons for refusing permission having regard to the likely effects of the proposal. In consequence, this has resulted in generalised and inaccurate assertions about the impact of the development. Therefore, it has behaved unreasonably in this regard.

11. The appellant has not fully demonstrated that the high rate of backhauled loads it used to calculate the likely vehicle movements can be realised. It was not unreasonable of the Council to question this and expect further evidence to substantiate the appellant's calculations. Therefore, the Council has not behaved unreasonably in respect of this matter.
12. The PPG advises that costs cannot be claimed for the period during the determination of the planning application and that costs unrelated to the appeal are ineligible (Ref. 16-033-20140306). It appears that much of the technical evidence provided in the appendix to the appeal statement was that prepared in relation to the planning application. Moreover, much of this was necessary to provide robust evidence to justify a departure from established visibility standards.
13. The Council was diligent and acted quickly to inform the appellant that changes had occurred at the junction such that it withdrew the related reasons for refusing the proposal. This is reflected in the Council's appeal statement. However, this appears to have taken place after the appeal was submitted, so the appellant was not aware of this position when submitting the appeal. It has therefore incurred some unnecessary or wasted expense in the appeal process in relation to preparing its case to address the reasons for refusal.
14. Therefore, for the reasons set out above unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is demonstrated.

Costs Order

15. 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 Norfolk County Council shall pay to Mr Lyndon Pallett of L P Pallett Quarry Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in the appeal process in contesting the visibility splay at the junction of Old Yarmouth Road and Church Road, such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. Mr Lyndon Pallett of L P Pallett Quarry Ltd is now invited to submit to Norfolk County 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.

Dan Szymanski

INSPECTOR