



Costs Decision

Hearing held on 6 and 7 December 2022

Site visit made on 6 December 2022

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 6 April 2023

Costs application in relation to Appeal Ref: APP/Y2003/W/22/3299010 91 Barrow Road, Barton-upon-Humber, DN18 6AE

- 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 Ben Pearson for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of existing dwelling and all other structures, the formation of a revised access to the highway, and new dwellings.
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Decision

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

The submissions for Mr Ben Pearson

2. The costs application was submitted in writing. The following additional points were made orally:
 - That the Council stated at the hearing that it expected full excavation of the site, which the applicant considered to be contrary to Policy HE9 of the North Lincolnshire Local Plan (2003) and to paragraph 199 of the National Planning Policy Framework (2021).
 - That the Council had failed to justify the potential resulting destruction of archaeological remains which it considered to be of equivalent significance to scheduled monuments.

The response by North Lincolnshire Council

3. The response was made in writing.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The PPG sets out that councils are at risk of an award of costs where they:
 - prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- fail to produce evidence to substantiate each reason for refusal on appeal;
 - make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; or
 - act contrary to, or do not follow, well-established case law.
6. The application was recommended by officers for approval subject to the imposition of conditions and subsequently refused by committee, and the report to committee does not find harm to highway safety. The committee report records that the proposal was acceptable to the highway authority, subject to conditions. The committee minutes do not record any specific highway safety or congestion concerns, although they do show a resolution to refuse the application in part on the basis of Policy T2 of the local plan. The decision notice then finds conflict with this policy.
7. The Council's statement of case gives only a brief description of the Council's highway safety concerns, and these are not supported by reference to any substantive evidence. Furthermore, I have found in my appeal decision that the proposal would not harm highway safety or congestion. It follows that I do not share the Council's concerns.
8. The Council's evidence, as a whole, provides minimal analysis of the existing highway safety situation and fails to then assess and conclude on any effects on this issue which would be attributable to the appeal proposal. The Council's highway safety concerns consequently lack supporting evidence and are so vague as to render it difficult for the applicant to be able to respond to them at appeal. Thus, I consider that the Council has failed to produce evidence to substantiate its highway safety and congestion reason for refusal on appeal, and that it has made vague assertions about the proposal's impact in this regard, which are unsupported by any objective analysis. This unreasonable behaviour has led directly to the unnecessary expense to the applicant of preparing an appeal submission on the matter.
9. The Council produced significant evidence to substantiate its archaeological remains reason for refusal at appeal, and provided a clear explanation of its concerns regarding the proposal's effect on the character and appearance of the area, so that no failure to produce evidence to substantiate these reasons for refusal on appeal, or vague assertions about their impact, have been demonstrated.
10. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with development plan policy, and no material considerations indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I consider that these circumstances arise in this case and therefore that the Council did not prevent or delay development which should clearly be permitted.

11. Furthermore, although officer recommendations were to grant permission in this case, planning authorities are not bound to accept the recommendations of their officers and therefore councillors were entitled to reach an alternative view on the effects of the proposal. As such, no unreasonable behaviour has been demonstrated in this regard.
12. Turning to the matter of potential conditions, I have found that the proposal would result in substantial harm, which has led me to dismiss the appeal. I have not concluded that suitable conditions would overcome this harm and enable the proposed development to go ahead. It follows therefore that I do not consider that permission was refused on a planning ground capable of being dealt with by conditions.
13. Whilst the costs application does not confirm which case law it refers to, a planning law statement with the appeal refers to case law concerning fallback positions. The Council's officer report considers that the Lawful Development Certificates issued in respect of the site provide such a position. It weighs the potential effect of the fallback position against the effect of the application proposal, in order to ascertain the weight to ascribe to the fallback. This method follows established case law and there is minimal evidence to suggest that any other case law may not have been followed in respect of the first reason for refusal. Whilst I note the planning appeal decision referred to, this does not form well-established case law. Furthermore, even if the development and circumstances in the other decision were similar, they would not inevitably provide an example that should be followed even if unacceptable harm results from the current proposal. Thus, it has not been demonstrated that the Council acted contrary to, or did not follow, well-established case law.
14. The extent of potential excavation of the site was discussed at the hearing, with agreement being reached that any conditions imposed should be clear on the proportions of the proposed preservation in situ and excavation. As my decision had not been issued at that point, the Council did not know whether my views in respect of the significance of the remains and the effect of the proposal on them aligned with its own. Thus, whilst the Council did not support the appeal proposal, it was necessary for all parties at the hearing to consider the potential imposition of conditions in the event that permission was granted. It follows that I do not concur that the Council failed to justify giving consideration to the potential for full excavation of the site.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the highway safety and congestion reason for refusal only and a partial award of costs is therefore warranted.

Costs Order

16. 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 Ben Pearson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the highway safety and congestion reason for refusal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

C Beeby

INSPECTOR