
Costs Decisions

Site visit made on 17 January 2023

by Dr Rachael A Bust BSc (Hons) MA MSc LLM PhD MInstLM MCMI MEnvSci MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Costs application in relation to Appeal A Ref: APP/X2600/W/21/3289250 Grandcourt Quarry (Extension), Leziate Works, Station Road, Leziate, King's Lynn, Norfolk PE32 1EH

- 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 Sibelco UK Limited for a full award of costs against Norfolk County Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the proposed extension of Grandcourt Quarry for the extraction of industrial sand with progressive restoration to nature conservation (including herb rich grassland, woodland and lake margins).
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Costs application in relation to Appeal B Ref: APP/X2600/W/21/3289252 Grandcourt Quarry, Leziate Works, Station Road, Leziate, King's Lynn, Norfolk PE32 1EH

- 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 Sibelco UK Limited for a full award of costs against Norfolk County Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted. The application sought planning permission for the extension to silica sand extraction operations with progressive restoration without complying with conditions 2, 3, 8 and 9 attached to planning permission Ref C/2/2004/2034, dated 7 September 2007.
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Decisions

1. The application for an award of costs in Appeal A is refused.
2. The application for an award of costs in Appeal B is refused.

Reasons

3. The Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own costs. However, it goes on to say that, where a party has behaved in an unreasonable way that has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

4. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
5. The applicant makes two allegations that the Council has behaved unreasonably. Namely, failing to provide credible and coherent evidence to support its position that had it retained jurisdiction it would have refused both applications. Consequently, then failing to determine the applications which should have been permitted, having regard to their accordance with the development plan, national policy and other material considerations.
6. The Council defended itself by refuting the allegations, providing information to explain its stance together with raising the issue that in its view, the applicant's claim was vague and flawed.
7. Taking the first of these allegations, I find that the Council did put forward evidence in their Statement of Case relating to the rights of way and groundwater which were the main issues the Council had concerns about. The Planning (Regulatory) Committee Report had also identified that the proposal conflicted with Policy DM14¹ and the National Planning Policy Framework. Consultation was undertaken and the Ramblers Association and Rights of Way Team were amongst the respondents. Collectively, their responses informed the Council's position. Whilst the applicant disputes this, I find the evidence was sufficient to understand the points of concern relating to this matter. Although I have come to a different conclusion on the planning merits of both appeals; the Council was not irrational in its position, and it was based upon relevant planning considerations.
8. Turning to the second allegation, all parties are expected to behave reasonably throughout the planning process. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding. However, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
9. These two planning applications were submitted concurrently in July 2018 and the appeals resulted from the Council failing to reach a decision for both cases. In any appeal against non-determination, the Council should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
10. In such cases where an appeal is allowed, the Council may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
11. The two applications shared the same Environmental Statement and Planning Statement and following submission various amendments, revisions and consolidations were made to the submitted documents.

¹ Norfolk Minerals and Waste Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026.

12. The Council undertook several periods of consultation on the further information. From the emails submitted the last period of consultation closed on 8 September 2021 and the Council advised the applicant that it was too late for the applications to be determined at the September Planning (Regulatory) Committee Meeting.
13. There was no October meeting, however the applications did not meet the Council's administrative deadlines for the November meeting. The evidence submitted with the appeals suggested that there was still ongoing dialogue regarding the rights of way routes and arrangements with third parties for the off-site monitoring of groundwater. Both the Council and the applicant were in communication with other parties. As such, I can see that both parties by this stage were working to reach a conclusion.
14. Although the applications were presented to the February 2022 Planning (Regulatory) Committee, the applicant had already lodged two appeals against non-determination with the Secretary of State by that time.
15. Although I allowed both appeals, towards the end of process there were requests for extensions of time which were agreed. The lines of communication were open with dialogue occurring between the parties. As such on the evidence before me I am satisfied that the delay was not due to the unreasonable behaviour of the Council.
16. Having carefully considered the points raised, it seems to me that both parties could have done more to expedite the determination of these proposals both during the application stage and the appeal process. However, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in either case. Accordingly, I determine that both costs applications should fail, and no awards are made.

Rachael A Bust

INSPECTOR