



Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

**A. Costs application in relation to Appeal Ref: APP/Y3940/W/24/3342139
Land adjacent to A350, West Ashton Rd, Yarnbrook, Trowbridge, BA14 6AF**

- 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 Homes Nuvo Limited for an award of costs against the decision of Wiltshire Council.
 - The appeal was made against the refusal of an application, Ref PL/2023/10654, which sought outline planning permission for 4No. dwellings with all matters reserved apart from access.
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**B. Costs application in relation to Appeal Ref: APP/Y3940/W/24/3342139
Land adjacent to A350, West Ashton Rd, Yarnbrook, Trowbridge, BA14 6AF**

- 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 Wiltshire Council for an award of costs against the decision of Homes Nuvo Limited to appeal.
 - The appeal was made against the refusal of an application, Ref PL/2023/10654, which sought outline planning permission for 4No. dwellings with all matters reserved apart from access.
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Decisions

1. Application A for award of costs is refused.
2. Application B for award of costs is refused.

Procedural Matter

3. I use two headings above as in this instance the two principal parties, the Appellant and the Council, have made a cost application against each other.

Reasons

4. Planning Practice Guidance (guidance) 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 unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be either procedural or substantive.
 5. The Appellant considers that there has been unreasonable behaviour by the Council. The Appellant argues that the Council acted unreasonably by not following guidelines on accepting additional information. This information could have resulted in positive changes, reducing the reasons for refusal. The Appellant feels prejudiced in that additional information cannot be submitted at appeal stage. The Appellant feels that potentially unnecessary costs have been
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incurred. For example, Biodiversity Net Gain work has and will lead to costs and the Appellant generally considers there has been significant financial disadvantage due to the Council's unfair and unreasonable behaviour during the lifetime of the application.

6. The Council rebuts the Appellant's case and makes a counter claim for costs. It indicates that at an early stage in the planning process the applicant was advised that there were procedural concerns with the application pertaining to the extent of the red line and land ownership and the associated required certificates and formal notices. The Appellant did revise matters and a second round of full consultation was issued; this led to further concerns by neighbours over red-line accuracy. The Council suggested further revision or withdrawal. The Appellant did not agree the landownership claims and that continues. Furthermore, the Council claims it advised the Appellant in good time that the scheme was unacceptable in principle and in any event would need ecological, flood risk and archaeological work. The Council advised that refusal would be forthcoming and withdrawal was offered or additional details could be submitted at own risk given the perceived procedural irregularity and that the principle of development was considered unacceptable.
7. The Council says that the Appellant declined to withdraw the application or submit further details, wished the Council to progress, and indicated more information would be provided at appeal stage albeit at the last minute a request for an extension of time was made to allow more information to be forthcoming. The Council felt it should progress with determination and argues it was the Appellant's actions which caused the appeal. Indeed, an appeal was clearly the predicated aim of the Appellant. Such an appeal in the Council's eyes was time and resource wasting for all as, not least with an incomplete application bundle, there would appear to be no way a favourable appeal outcome could be forthcoming. This is compounded by what is seen as a baseless claim for costs against the Council
8. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs for either party.
9. From the Appellant's perspective, I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost. It is clearly regrettable when an applicant feels that the processing of a planning application could have been dealt with better. However, I am not persuaded that actions of the Council during that period directly lead to the appeal. It would seem to me that the Council took a reasonable, and communicative, approach to the handling of the planning application and the decision was in a fair timescale and had an appropriate degree of logic and professionalism. The Appellant could have provided more information within the application bundle or as follow-up but did not and post decision then reasonably exercised the fair rights to appeal and to make an application for costs.
10. Looking at the Council's perspective I can see that it would not choose to spend time and effort handling an appeal that it felt had no chance of success. However, I would say that the appeal was understandable and not frivolous and it was not inconceivable that an Inspector could reach a different decision from the Council. The Appellant put forward a comprehensive and reasonably

argued case with suitable material that was well worth careful review by the Inspectorate. The Appellant was entitled to appeal and the normal consequent procedure is for the Council to present its case, as it did. Similarly, the Appellant chose to make a claim for costs and I would not read that as a completely irrational stance. Again, the Council, reasonably, chose to respond to that case and in this instance went further by deciding to make a counter-application for costs.

11. From the above two paragraphs I trust it can be gauged that it would not be appropriate to award full or partial costs to either principal party. I would conclude that there was no unreasonable behaviour by either the Council or the Appellant. In my opinion, neither side took a stance which was unsubstantiated and neither party took actions during the planning assessment process or via the subsequent appeal which would be deemed as being irrational.
12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated in the cases of the applications for costs A or B.

D Cramond

INSPECTOR