



## Costs Decision

Site visit made on 3 September 2024

**by M Cryan BA(Hons) DipTP MSc MRTPI**

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

**Decision date: 6 November 2024**

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### **Costs application in relation to Appeal Ref: APP/Y2003/W/24/3336598 Land and Barn next to Stables Restaurant, High Street/Scotter Road, Messingham DN17 3UJ**

- 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 Philip Jackson of Jackson Philips Asset Solutions for a full award of costs against North Lincolnshire Council.
  - The appeal was against the refusal of outline planning permission for a 0.96ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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.
3. Paragraph 049 of the PPG sets out examples of the types of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. These include "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations", "failure to produce evidence to substantiate each reason for refusal on appeal", "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis", and "refusing 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".
4. The application to which the appeal related was for outline planning permission, and was refused by the Council's planning committee against the recommendation of its officers. The reason given related to the drainage strategy for the site and, in particular, whether sufficient information had been provided to demonstrate that the scheme would not either lead to flooding on the appeal site or increase the risk of flooding elsewhere in Messingham.
5. That the committee did not accept the recommendation of its officers is not in itself an indication that the Council acted unreasonably; it is entitled to disagree with the recommendation put before it. However, that needs to be substantiated at appeal. The matter of drainage had been considered at planning application stage; the consultation response from the Lead Local Flood

Authority ("the LLFA") advised that it would be acceptable and appropriate to impose a condition requiring the submission of further information (relating to, among other things, ground infiltration rates, the detailed design of attenuation schemes including storage volumes, and a scheme for the adoption and maintenance of surface water drainage infrastructure) at the reserved matters stage.

6. The Council commissioned a surface water drainage review for the appeal, but although this was more detailed and "technical" than the LLFA response at the planning application stage, it did not set out any significant requirements for information or design detail beyond those which had been identified previously. The reason for refusal was not therefore substantiated at appeal and, for reasons set out in more detail in my main decision, I was content that the matter could be satisfactorily dealt with by conditions.
7. I also note that the Council did not make the risk of flooding a reason for refusing planning permission for a previous identical scheme in 2022<sup>1</sup>. Considering surface water flood risk among "other matters" in the light of anecdotal evidence of surface flooding in the village, the Inspector determining the appeal in respect of that earlier scheme<sup>2 3</sup> found in 2023 that "there [was] no objective evidence to suggest that acceptable drainage and sewerage solutions could not be incorporated as part of the detailed matters". No substantive evidence was put before me to demonstrate that the picture in respect of surface drainage has changed materially since that previous appeal.
8. The minutes of the planning committee attribute to one councillor the comment that as "the applicant had took no notice of what was requested [...] she was minded to refuse the application". While that strikes me as an unusual observation, in the absence of any further context or explanation I cannot interpret it as illustrating unreasonable behaviour on the Council's part.
9. However, taking my previous points together, I consider that the Council acted unreasonably in refusing planning permission on a planning ground capable of being dealt with by conditions, and that its reasons for doing so were not adequately substantiated at appeal stage. This led directly to unnecessary expense for the applicant in preparing additional information for and submitting the appeal. The Council's actions have meant that the appellant has incurred unnecessary expense, and an award of costs is justified.

## Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

## Costs Order

11. 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 Philip Jackson of Jackson Philips

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<sup>1</sup> LPA Ref: PA/2021/1330

<sup>2</sup> PINS Ref: APP/Y2003/W/22/3297656

<sup>3</sup> The main issues in the 2023 appeal related to impacts on living conditions, and the provision of affordable housing, recreation facilities, and a contribution towards education provision, which were not main issues in this appeal.

Asset Solutions, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. 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.

*M Cryan*

Inspector