



Costs Decision

Site visit made on 17 December 2024

by **P Storey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 February 2025

Costs application in relation to Appeal Ref: APP/W0734/W/24/3350342 137 Southfield Road, Middlesbrough TS1 3HB

- 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 Imran Khan of Prime Properties MB Ltd for a partial award of costs against Middlesbrough Council.
 - The appeal was against the refusal of planning permission for erection of two storey front bay extension (demolition of existing two storey bay window), second floor extension to rear, garage conversion into habitable room and internal configuration from 7no. bed HMO to 12no. bed HMO.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
3. To justify an application for costs, the PPG requires clear evidence demonstrating how alleged unreasonable behaviour has resulted in unnecessary expense. This could relate to the entire appeal or only part of the process.
4. The application for a partial award of costs focuses solely on the matters relating to the Council's 4th reason for refusing planning permission, which concerns the effects of the development on the Teesmouth and Cleveland Coast Special Protection Area, a designated European Site.
5. As outlined in my accompanying appeal decision, it was not necessary for me to undertake an appropriate assessment (AA) to determine the effects of the development on the European Site, as the appeal was dismissed for other reasons.
6. However, the evidence before me indicates that the main parties agreed the proposal would have a likely significant effect on the integrity of the European Site prior to the determination of the planning application. Under the provisions of The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations), the Council, as the competent authority when determining the planning application, must be satisfied that adverse effects on the integrity of the European Site could be ruled out.
7. The applicant has provided evidence of unsuccessful attempts to purchase credits through Natural England's Nutrient Mitigation Scheme (NMS) for the River Tees Catchment Area, to mitigate such adverse effects. The Council was kept informed

of these efforts, demonstrating the applicant's willingness to secure mitigation via this route. However, the availability of NMS credits is limited, and this is beyond the Council's control. As such, there is no guarantee of when, or even if, sufficient credits would be available to the applicant to mitigate the effects of the development. Furthermore, no alternative mitigation measures were proposed or secured. Based on this, the Council had reasonable grounds to refuse planning permission in accordance with the Regulations.

8. I was also provided details of an appeal decision¹ where a Grampian condition was used to address this issue. Notwithstanding that I must determine each appeal on its own merits, there appear to be significant differences between these cases. Notably, in the example cited, it appears that a mitigation scheme had already been agreed between the appellant, the Council and Natural England, forming the basis for the Grampian condition. This was not the case in the current appeal.
9. The appellant raised concerns about unclear communication from the Council during the application process, including the delayed provision of consultation responses and the clarity of validation criteria. While I acknowledge these concerns, they do not lead me to depart from my previous findings.
10. For these reasons, I do not find that the details set out in the costs application amount to unreasonable behaviour, as set out in the PPG.

Conclusion

11. Based on the details before me, I find no evidence to demonstrate unreasonable behaviour by the Council that has resulted in unnecessary or wasted expense for the applicant during the appeal process. The application for an award of costs is therefore refused.

P Storey

INSPECTOR

¹ APP/B1740/W/20/3265937