
Costs Decision

Site visit made on 28 January 2025

by **G Dring BA (Hons) MA MRTPI MAUDE**

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Costs application in relation to Appeal Ref: APP/V2635/W/24/3351935 Toilet Block, East of 74 South Beach Road, Heacham, Norfolk PE31 7BB

- 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 Marsh for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the grant of planning permission subject to a condition for the retention of existing toilet block.
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Decision

1. The application for a full 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 (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. The applicant's case is that they were not informed about the proposed imposition of the condition prior to determination at planning committee, that the Council attached a condition which did not meet the tests set out in the National Planning Policy Framework (the Framework) and that the Council did not adequately review its decision in order to avoid the need for the appeal.
4. The Council state that as the condition imposed was not pre-commencement, no agreement from the applicant was needed. It is also stated in the Council's rebuttal as to why they consider the condition meets the tests set out under the Framework.
5. Whilst I note the limited timeframe the applicant had between notification of and the consideration of the application at planning committee, I accept the Council's point that there was no requirement to gain agreement to the condition prior to it being imposed.
6. The PPG is clear that local planning authorities are at risk of an award of costs should they behave unreasonably by imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the Framework.
7. As stated in my appeal decision, I have found that the disputed condition was not reasonable or necessary in order to make the development acceptable. I do not find that substantive evidence has been provided by the Council to demonstrate

that the toilet block would be likely to be used as a public convenience. I have found that the use of the toilet block is self-limiting, without the need for a restrictive condition, due to the location of the toilet block on private land, the established uses and the toilet facilities they have and the limited scale of those uses.

8. I recognise the concerns raised by the Council about an incident last summer where it received a complaint about the toilet block being overwhelmed. Nevertheless, the Council has confirmed that this related to the unauthorised use of the wider site for a camping and caravanning event and that subsequently an application for a lawful development certificate for this use has been refused by the Council. This use is therefore not one that is a lawful use within the wider site. As part of any future planning or environmental consent applications made relating to changes to the wider site, considerations would include the effect of any proposal or scheme on environmental impacts and biodiversity.
9. Therefore, I conclude that by imposing a condition that was not necessary or reasonable, the Council's behaviour has been unreasonable. It thus follows that the applicant has incurred unnecessary expense through needing to submit the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Costs Order

10. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Marsh, 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.
11. The applicant is now invited to submit to King's Lynn and West Norfolk Borough 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.

G Dring

INSPECTOR