



Costs Decisions

Site visit made on 5 February 2025

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Costs application in relation to Appeal A Ref: APP/K3415/W/24/3350671

Land Adjacent To 176 Birmingham Road, Shenstone Woodend, LICHFIELD, Staffordshire WS14 0NX

- 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 A Kirby for a full award of costs against Lichfield District Council.
- The appeal was against the refusal of planning permission for the erection of a single dwelling.

Costs application in relation to Appeal B Ref: APP/K3415/W/24/3350672

Land Adjacent To 176 Birmingham Road, Shenstone Woodend, LICHFIELD, Staffordshire WS14 0NX

- 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 A Kirby for a full award of costs against Lichfield District Council.
- The appeal was against the refusal of planning permission for the erection of a single dwelling.

Decisions

1. The application for a full award of costs, in association with Appeal A, is allowed.
2. The application for a full award of costs, in association with Appeal B, is refused, but a partial award is allowed in the manner set out below.

Reasons

3. Applications for costs have been made by the appellant against the Council's refusal of both schemes subject to appeals A and B. As the costs applications make the same assertions for both schemes, I shall consider these together.
4. 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. The PPG explains that a Council may be vulnerable to costs if it has unreasonably refused a planning application. This states that unreasonable behaviour could include where a Council has refused planning permission on a planning ground capable of being dealt with by conditions and not determining similar cases in a consistent manner.
5. The appellant alleges that the Council has behaved unreasonably in a substantive manner by being inconsistent with previous decisions taken on site by both the Council and previous appeal decisions and has failed to recognise these as material planning considerations.

6. Determining planning decisions in a consistent manner is an important expectation of everyone involved in the decision-making process of a planning application. This provides certainty in the process and maintains public confidence in the system. It is well established by the courts that previous planning decisions taken by a Council are capable of being material considerations.

Consideration of matters relevant to Appeals A and B

7. Appeals A and B were refused planning permission with similar grounds of refusal for reasons No's 1 (impact on trees) and 2 (highway safety). The appeal sites, consisting of Appeals A and B, have been subject to several planning applications in the past. Most importantly is an outline approval, granted in 2021 for two dwellings, by appeal. These were subsequently followed by the Council's approval of two reserved matters approvals. These consents recently lapsed unimplemented but provide an important context to the proposals the subject of both appeals.
8. A Council is not necessarily bound by previous decisions it has taken, as each case must be considered on its own merits. Nonetheless, for reasons of consistency, a Council must be able to demonstrate why it decided to refuse a scheme that appears similar to previously approved development. The schemes the subject of these appeals are very similar, if not identical, to that approved in outline form and its subsequent reserved matters. The council has not indicated otherwise. The Council has also not suggested that the site or its context has materially changed or that policies have changed to a degree that would enable it to make a different decision.
9. The Council asserts that both proposals received objections from the Highway Authority and its Tree Officer that raise material planning considerations. The Council also states that the appellant did not seek any pre-application advice although it does not explain why this might be relevant.
10. The objections received from the Highway Authority and Tree Officer are important matters, that I have responded to in my main decision. Nonetheless, the Council does not appear to have balanced these considerations against the previous decisions that have been made on the site. There is no clear evidence that the Council applied a pragmatic approach or thought to insulate itself from potential future criticism that it was behaving in an inconsistent manner. In terms of the failure to obtain pre-application advice, this would seem to have been of limited value in the planning context of these appeals.
11. In the Council's favour I found the submitted details of both proposals to be unclear in places, for example in showing the existing dwelling being replaced in the combined layout plan. Also, the appellant did not address the Highway Authority's concerns that the visibility splay and parking spaces seemed to be incorrectly drawn and were therefore inaccurate. Nevertheless, in my main decision and despite these points, I found that the proposals would not result in harm to highway safety. The Council states that the new access is proposed in "broadly the same location" as was approved by appeal in 2021, but has not stated how it is different and whether this change has resulted in its revised opinion, noting that it did not object to the access in a similar location in 2021.
12. In terms of tree concerns, in my main decision I found that whilst an Area Tree Preservation Order Covered the whole site, there were no trees within or especially close to either application site. The Council has stated that the Order includes "all

broadleaved and coniferous trees within the continuous line of the map”. As no trees are within either site no trees would appear to be affected. On this basis, it seemed irrational to ask for a tree survey. Furthermore, the Council did not seem to consider, in the officer reports or its Statements of Case, whether the imposition of conditions could address the reasons for refusal.

13. As such, the Council has objected to elements of the scheme that a previous Inspector has found to be acceptable without sound reason. Furthermore, the Council required details that it did not need to determine the applications and did not rigorously test whether conditions could be imposed to address its concerns. For these reasons the Council has behaved in an inconsistent manner without clear reasons and thus has behaved unreasonably with respect to Appeal A and the first two reasons for refusal of Appeal B.

Consideration of matters relevant to Appeal B

14. Appeal B relates to a proposal that was refused with two additional reasons, in comparison to appeal A, being reasons No's 3 (impact on protected species) and 4 (contribution towards biodiversity). The Conservation of Habitats and Species Regulations [2017] requires a decision maker, as competent authority, to be satisfied that development would not cause harm to a protected species. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before any planning permission is granted. Nonetheless, it seems relatively clear, within the submitted evidence, that bats and birds were deemed to be the only protected species likely to be affected by the proposal.
15. Previous (historical) ecological assessments could not be relied on as survey work that is more than two years old may be unreliable. As a result, it was important that the Council had up-to-date survey work to make its decision. Despite the submission of a Bird and Bat survey, the Council found this had been submitted too late to be taken into account and refused the proposal on the south site for reasons that included reasons for refusal 3 and 4. As the proposal was not supported by a Bird and Bat Survey, the Council were unable to determine whether protected species would be affected by the proposal. Furthermore, as the presence of these was unknown the appropriate level of any necessary mitigation, including appropriate biodiversity enhancement measures, was also unknown.
16. In my main decision I have found that the Council should have taken the Bird and Bat Survey into account when considering the appeal submission. Nonetheless, the Council did not have this information in adequate time for the proposal associated with appeal B during its assessment of the planning application. As a result, it was unable to properly both consider the survey, and make an expedient planning decision as required by Government timeframes, in the time available. Although, the Council could have sought additional time to consider the application, I do not find its decision to immediately refuse the proposal to be unreasonable in this context. Accordingly, the Council did not act unreasonably in refusing the scheme the subject of Appeal B, with respect to reasons 3 and 4.

Costs Order for Appeal A

17. For Appeal A, an application for a full award of costs is allowed.
18. 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 Lichfield District Council shall pay to Mr A Kirby, 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.
19. The applicant is now invited to submit to Lichfield District 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.

Costs Order for Appeal B

20. For Appeal B, an application for a full award is declined, but a partial award to address tree and highway matters as defined by reasons for refusal 1 and 2 is allowed.
21. 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 Lichfield District Council shall pay to Mr A Kirby, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing evidence with respect to matters of highways and trees (reasons 1 and 2); such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Lichfield District 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.

B Plenty

INSPECTOR