



Costs Decision

Hearing held on 30 January 2025

Site visit made on 29 January 2025

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2026

Costs application in relation to Appeal Ref: APP/E2001/W/24/3352438

Land west of Southfield Lane, Tunstall HU12 0HZ

- 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 J & A Smales Ltd for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for a hybrid application consisting of:
 - a) full planning permission for change of use of agricultural land to enable the siting of 180 static caravans with associated access road, car parking, landscaping and associated engineering works to create lake; and
 - b) outline planning permission (all matters reserved) for a reception and toilet/changing room facilities with associated car park area.
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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. The applicant contends that the appeal was unnecessary for two main reasons. Firstly, the failure to properly consider, assess, and weigh all the proposed benefits, with only economic benefits associated with tourism being mentioned in the reason for refusal. Secondly, an inconsistent approach to decision making and in applying the development plan policies, when assessing other new or expanded holiday parks in the same landscape character area.

Proposed Benefits

4. The PPG identifies one example of unreasonably refusing a planning application, as being in 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.
5. The parties disagree as to the planning merits of the case and the level of its compliance with the development plan. The issues incorporate a level of planning judgement relating to the amount of harm to the landscape character, and whether the proposed benefits would outweigh that harm. In dismissing the appeal, my determination concurred with that of the Council in this regard. While I found this to be a more finely balanced judgement than did the Council, the appeal outcome

indicates that the Council was not therefore unreasonable to have refused the application in totality, as it should not ‘clearly’ have been permitted.

6. The applicant criticises that the only benefits mentioned in the reason for refusal are economic benefits associated with tourism. However, there is no requirement or need for the reasons on the decision notice to go into significant detail or rehearse the discussions within the main report. I therefore take no issue that only economic benefits were mentioned, as being those which the Council deemed to be of most importance.
7. Regarding Biodiversity Net Gain (BNG), the applicant considers that the officer report should have identified each specific percentage gain for general habitat, hedgerow habitat and water habitat, in order to properly assess these benefits. Furthermore, the officer report only states that *“the BNG report provides evidence the proposals have sought to secure a minimum of no net loss in respect to biodiversity,”* but does not identify how the individual habitat scores would well exceed the minimum BNG 10% requirement.
8. However, the officer report did repeat the consultation response from the Nature Conservation Officer, who themselves had reviewed the BNG report in detail. The officer report referred that there would be a variety of new habitats created, which would be in accordance with Policy ENV4. Paragraph 6.79 identifies that the development would offer an overall 117% increase in BNG value, which would have wider public benefit, albeit in the Council’s appeal statement concern is raised that this figure should not be aggregated in this way. I note that the applicant’s original Planning Statement similarly did not specify the precise BNG figures, but referred back to the BNG Assessment.
9. The officer report paragraph 6.70 also identifies that *“the BNG calculation is based on... the proposed retention of existing tree, hedgerow and shrub habitat and the proposed habitat creation illustrated within the Landscape Masterplan... including woodland, hedgerows, meadow grassland, species rich amenity grassland and water bodies which generally correspond with the recommendations within the Preliminary Ecological Appraisal”*, and refers to securing details via condition to ensure that the proposed gains in biodiversity are achieved. I therefore find sufficient evidence that the Council properly considered the BNG benefits. While stating the detailed BNG percentages would have provided more clarity, the Council’s failure to do so does not amount to unreasonable behaviour.
10. The applicant also asserts that as 10% BNG was not a statutory requirement at the time the application was submitted, the weight given to the BNG should be higher than the moderate weight given in a similar situation as discussed in a recent High Court ruling¹. However, although the principle of that ruling is relevant, there is no indication that the Council reduced the weight it gave to the first 10% of the BNG on the basis that 10% would be a forthcoming legislative requirement.
11. Each site must be assessed on its own merits and context. Although a scheme elsewhere may have afforded a certain level of weight to a specific BNG percentage, that does not indicate all schemes with higher BNG percentage increases should be afforded greater than that weight. Weight is not ascribed on a

¹ Weston Homes Plc, R (On the Application Of) v Secretary of State for Levelling Up, Housing and Communities & Anor [2024] EWHC 2089 (Admin)

numerical scale. For BNG in particular the assessment must consider a range of aspects beyond the percentage increases.

12. Supporting the Council's approach in this instance, the applicant's BNG Assessment noted that the BNG achieved was predominately due to the existing low ecological value habitat of the arable land, with the new habitat created ranging from Very-Low to Medium ecological value. The Council's appeal evidence reinforced that the Council considered the BNG gains to have only limited weight on this basis.
13. Overall therefore, although neither the precise BNG figures or the specific level of weight to be attached in support were cited in the officer report, I find that the BNG was properly considered.
14. Regarding the economic benefits, the officer report paragraphs 6.78 and 6.79 identify that the Local Plan policies recognise the importance of tourism particularly to the Bridlington Coastal sub-area economy, and that the Framework is clear that significant weight should be placed on the need to support economic growth and productivity. It states that the proposal would provide new and improved tourism development facilities close to Roos and Withernsea which is supported by local and sub-regional economic development objectives.
15. Paragraph 6.80 then breaks down the specific benefits from the appeal proposal, and Paragraph 6.82 summarises that "*it is recognised that there would be a number of economic benefits to the scheme, and these have been considered in detail by Officers.*" The East Riding Tourism Accommodation Study (2016) is cited in the list of relevant documents, as are the support letters from local businesses. The Council's appeal evidence confirmed the economic benefits as having significant weight in the planning balance, that being the weighting inferred in the officer report with reference to the Framework. Taking all the above into account, I find that the Council did properly and fully consider the proposal's economic benefits.
16. The officer report also referenced more minor benefits; improvement of surface water flooding on Southfield Lane (paragraph 6.79), the site's sustainable location regarding the local services in Roos and the Public Right of Way and nearby bus stop (6.80); the proposed lake offering recreational health and welfare benefits to local people (6.80); and acknowledgment of the significant amount of new planting, referencing that the applicant's supporting information highlights that landscaping would not only benefit the site but would assist in screening existing neighbouring sites (6.38 and 6.79).
17. I concur with the Council that the highway improvements at the Withernsea Road and Southfield Lane junction would be mitigation, rather than a benefit. Neither is any support provided by roll-back needs from future coastal erosion.

Inconsistency

18. My Appeal Decision identifies the various differences I found between the appeal proposal and the nearby permissions put forwards as comparisons. These sites include 'Low Skirlington'² and 'South Cliff'³ as being specifically identified in relation to the costs application. The applicant does acknowledge that each proposal must

² 19/04358/STPLF Land South of The Grange, Hornsea Road, Skipsea, approved 15 October 2020.

³ 17/01035/REG3 Land West of South Cliff Caravan Park, Pioneer Road, Wiltsthorpe, approved 22 September 2017.

be treated on its own merits. The Council has sufficiently explained the differences between those sites and the appeal site, such that I found no clear precedent which should have been followed in this instance. I therefore do not find inconsistent decision making in this regard. This also applies to the pre-application advice, which the PPG advises cannot pre-empt the democratic decision making process or a particular outcome⁴.

19. The applicant also takes issue with paragraph 1.10 of the Council's 'Response to Appellant's Claim for Costs', which states it would not be satisfactory to rely on screening in the long term to justify an otherwise harmful development, since it could become diseased or damaged, or could fail at any time and any planting or re-planting would take a significant period of time to establish. I do find this to be somewhat clumsily worded, especially with regard to the Framework paragraph 56, as screening forms an integral element of proposals and can be conditioned. However, the hearing discussion clarified that the Council considers that landscaping could not be solely relied upon in this instance no matter how much were provided with relation to visual character, as it is the proposal's intrinsic impact on character which could not be mitigated.
20. This matter does not appear to have been raised by the Council for Low Skirlington or other sites, but from the evidence before me, the Council deemed those proposals to have a less severe intrinsic character impact. The Council also made clear reference to the need to secure landscaping at the appeal site through relevant conditions. Even were there to be inconsistency in this regard, this would not in isolation have led to wasted expense in the wider context of the reason for refusal, and the applicant's need to address this in totality. I therefore find this point is not so substantive or standalone as to justify any costs award solely on this basis.
21. The applicant also considers the officer report paragraph 6.70 to be inaccurate, in stating that the Landscape Masterplan was indicative at that stage. However, the BNG Report (Crow Ecology, November 2022) sections 1 and 4.3 both state that *"given that the current landscape proposals are only at masterplan stage, much of the landscape elements are indicative only. More exact details will come with the detailed design phase."* The two Boundary Landscape plans are also titled and clearly labelled as indicative. As such it was reasonable for the Council to use the same description.

Conclusion

22. Overall therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L N Hughes

INSPECTOR

⁴ Paragraph: 011 Reference ID: 20-011-20140306, Revision date: 06 03 2014