
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: 07 March 2025

Costs application in relation to Appeal Ref: APP/V2635/W/24/3350161 40 Small Lode, Upwell PE14 9BE

- 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 R Starr for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of an application described as 'planning permission for residential development. The application is submitted in outline with only matters of access committed'.
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Decision

1. The application for an award of costs is allowed in part 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. The PPG indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, however, behaviour and actions at the planning application stage can be taken into account when considering whether costs should be awarded.
3. Unreasonable behaviour on the part of a local planning authority may include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and material considerations, not determining similar cases in a consistent manner and persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
4. It is asserted that the Council did not make its decision in a timely manner. The applicant states that the agreed determination date was the 30 June 2024, however the Council's decision was not made until 15 August 2024. I note that the appeal was initially made against non-determination of the application, but that the Council issued a decision on the application prior to the appeal being valid and therefore the appeal continued as an appeal against the refusal of planning permission, not non-determination. The applicant considers that had the Council determined the application within the agreed timeframe, an appeal would not have been necessary.
5. The Council has not provided any explanation for the delay in determining the application. I therefore find that there were unacceptable delays, and the Council did not provide a timely service to the applicant. However, whilst timeliness issues

- were frustrating for the applicant, in this case I find that even if the decision was made earlier, an appeal would not have been avoided. This is due to my findings in the appeal decision. I therefore do not find that the Council prevented or delayed a development which should clearly have been permitted.
6. The applicant contends that the Council was inconsistent in its decision making because under a previous outline application for residential development at the appeal site, the Council did not engage Part 3 Section 5(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requesting that full details were submitted so that a decision could be made, as it did in this case. The Council confirmed in its appeal statement that the Section 5(2) was served given the sensitive nature of the site within the Upwell Conservation Area (CA).
 7. However, an Inspector dealing with an appeal related to that previous outline scheme considered the effects of developing the site on the character and appearance of the area, including on the significance of the CA and found that in principle, the site could be developed in such a way that the character and appearance of the CA would be at least preserved. The previous appeal was determined with only indicative details provided.
 8. The applicant considers that the requirement to submit details under Section 5(2) was not necessary and that having to draw up full details, in order for the Council to determine the application, has resulted in unnecessary expense. In response the Council state that the applicant could have appealed the notice under Section 5(2) rather than submitting the details.
 9. I accept that the Council was able to utilise its rights to engage Section 5(2) in procedural terms. I also acknowledge that the applicant could have submitted an appeal in response to the Section 5(2) notification rather than submitting the full details.
 10. However, the Inspector's decision on the previous appeal, clearly pointed to the acceptability in principle of the residential development of the site, based on an outline application, without full details. The Council has not provided any significant justification as to why the views of the previous Inspector should have been disregarded on this matter and as a result why it was necessary to consider all of the reserved matters in order to come to a decision. I concur with the previous Inspector and find that issues raised by the Council, in terms of layout, scale, appearance and landscaping, could have been dealt with effectively at the reserved matters stage.
 11. I therefore find that the inconsistency in approach including not following the direction of the previous Inspector's decision in this regard has resulted in unreasonable behaviour. This led to unnecessary expense relating to the submission of full details. In turn, this led to the cost of defending the issues raised under the Council's first and second reasons for refusal at appeal. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

12. 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 R Starr, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in submitting documents on matters that should have been reserved for future consideration, which have subsequently formed the basis of the Council's first and second reasons for refusal and the costs incurred in order to defend those reasons for refusal at appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. 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