



Costs Decision

Site visit made on 23 April 2025

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd June 2025

Costs application in relation to Appeal Ref: APP/K0940/W/24/3351932

Land North of Underbarrow Road, Kendal LA9 5RS

- 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 Westmorland and Furness Council against F and M Pennington.
 - The appeal was against the refusal of planning permission for Outline application for the erection of 8 self-build dwellings.
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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.
3. Unreasonable behaviour in this context can be taken to be either procedural, relating to the process; or substantive, relating to the issues arising from the merits of the appeal. In this case, the allegations from the applicant ('the Council') are based predominantly on procedural grounds.
4. Types of behaviour which may give rise to an award of costs against an appellant on procedural grounds include, but are not limited to; a lack of co-operation with the other party or parties in providing information and discussing the application or appeal; delays in providing information or other failure to adhere to deadlines; and only supplying relevant information at appeal when it was requested, but not provided, at application stage.
5. The Council's claim is two-fold; firstly, that F & M Pennington ('the appellant') did not engage in pre-application discussions following the earlier refusal of a similar scheme on the appeal site; and secondly, that technical reports were submitted late in the application process or with the appeal and were not available during the assessment of the planning application.
6. On the first ground, whether the appellant chooses to use the Council's pre-application service or not is up to them. Although the National Planning Policy Framework (the Framework) advocates for early engagement in this manner, it is not mandatory, although it can be a useful tool to refine the focus of a planning application. However, I note that discussions had taken place, which are documented through the appellant's meeting notes provided with the appeal. As such, I do not consider that the lack of pre-application engagement constitutes unreasonable behaviour in this case.

7. On the second ground, the Council has highlighted the late submission of reports and documents relating to landscape and visual impacts, foul water drainage, land contamination, and ecology and biodiversity. I have been provided with a string of email correspondence between the parties and it is clear that communication was strained during the planning application. This is not ideal in general terms and certainly not with regards to a site that has seemingly had a 10+ year development period.
8. I note that the Landscape and Visual Impact Assessment Rebuttal¹ was submitted with the appeal, although the Landscape and Visual Impact Assessment/Review² was submitted with the planning application. I have been provided with a copy of the appellant's agent's meeting notes dated 6/2/23 within which a note is made which states 'don't need full LVIA...' although I cannot make out more than that. However, I have no reason to doubt the authenticity of the note, and the Council has not drawn my attention to anything to doubt this was advised during the meeting.
9. I note that the rebuttal largely responds to points made by the applicant within the officer report. However, baseline photography of viewpoints in the surrounding area was requested during the application process and not provided until the appeal was lodged. This would have provided a vital tool in the assessment of the proposal during the application process and after the submission of these within the rebuttal, this necessitated that the Council undertaken additional work and incur unnecessary expense during the appeal rather than the application process.
10. With regards to foul water drainage, I note the appellant advises they were not aware of the matter and that the Council did not draw their attention to it after United Utilities submitted its consultation response to the planning application. While the lateness of this information is not ideal, it is unclear as to how this has caused the Council unnecessary expense given the matter was dealt with by an external consultee who previously advised the matter could be dealt with by a planning condition attached to a grant of permission pending the receipt of clarification.
11. The planning application was supplemented by a contaminated land report³ which dated from 2016, while an updated assessment was submitted with the appeal⁴. I note that the Council's public protection officer advised that conditions would be required to be attached to a grant of permission in order to ensure that the necessary measures are taken to avoid harm to human health during development. This was in an email dated 13 November 2023, prior to the email from the Council to the appellant advising that public protection had since confirmed that the 2016 report was out of date and an updated assessment would be required. I do not have anything before me to indicate when the request for an updated report was raised.
12. Regardless, from the evidence before me it seems as though the first mention of a requirement for an updated contamination report was 2 months prior to the application's refusal in April 2024. The subsequently updated report is dated June 2024, which is 4 months after the request. As such, the Council provided a clear

¹ Galpin Landscape Architecture – August 2024

² Galpin Landscape Architecture – October 2023

³ Meridian Geoscience – Rev O, December 2016

⁴ Tweddell & Slater Ltd – 12 June 2024

date for the planning committee to determine the application, and the updated report was not provided despite the 2-month notice. The supplying of relevant information at appeal when it was requested, but not provided, at application stage has necessitated that the Council spend additional time consulting their appointed technical experts at the appeal stage. Regardless, this delay has caused the Council unnecessary expense in the appeal process.

13. Finally, the aforementioned email correspondence demonstrates that initial concerns regarding the 2015 ecological survey⁵ were mentioned in an email on 30 November 2023. The appellant advised on the same day that the report was submitted with the application, but a request for an updated survey to be carried out was given in an email sent on 8 February 2024 by the applicant. It is unclear what caused this delay, although it is not unreasonable to require an updated survey given the original was some 8 years old by the time the application was made.
14. I understand that an updated survey⁶ was undertaken and submitted to the Council on 10 April 2024, received at 3pm the day prior to the planning committee meeting which determined the application. The survey date given in the addendum is the same day, and it is unclear why this work was not undertaken after it was requested and a deadline for submission of details was provided by the Council 2 months prior.
15. To my mind, it was not unreasonable of the Council to reject the significant additional work at this late stage, particularly when officers would have required time to assess the new information, and a clear deadline was provided prior. While the report was technically submitted prior to the committee meeting during the application process, the suggestion that the Council could have delayed the meeting to accommodate this new information would in and of itself have caused unnecessary delays after the 2-months' notice for the committee meeting was made clear. Regardless of whether the Council's ecologist visited the site once, this occurred during the appeal rather than when assessing the planning application. The PPG makes clear that all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.
16. In the case of the technical reports discussed above, the appellant makes the point that there was found to be no harm or that harm could be mitigated. Some of this is agreed by the Council's technical experts. However, the findings of technical reports have no bearing on whether unreasonable behaviour has occurred and ultimately caused the applicant to incur unnecessary or wasted expense in the appeals process through these delays.
17. The applicant has had to defend reasons for refusal at appeal, which necessitated spending additional time consulting technical experts in order to substantiate these reasons for refusal to accompany the appeal. Accordingly, I find that the applicant has incurred unnecessary expense in the appeals process on this ground as a result of unreasonable behaviour.

⁵ SK Environmental Solutions Ltd – 18 June 2015

⁶ SK Environmental Solutions Ltd – 10/04/2024

Conclusion

18. I therefore conclude that the applicant's costs in defending the reasons for refusal within the appeal were not unnecessarily incurred overall. Consequently, the application for a full award of costs is not justified. However, I find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated in relation to the late submission of additional information regarding the matters above, and on this basis a partial award of costs is justified.

Costs Order

19. 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 F & M Pennington shall pay to Westmoreland and Furness Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the additional reports relating to landscape and visual impacts, ecology and contaminated land as described in the preceding paragraphs, such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to F & M Pennington, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C McDonagh

INSPECTOR