



Costs Decision

Inquiry held on 1 April 2025

Site visit made on 1 April 2025

by Diane Lewis BA(Hons) MCD MA LL M RTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2025

**Costs application in relation to Appeal Ref: APP/W0530/W/22/3308444
Land to the South of Chear Fen Boat Club, Twenty Pence Road, Cottenham,
Cambridgeshire.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Cambridgeshire District Council for a full award of costs against Mr Drew Price and Mr James Ball.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use.
 - The costs application, the appellants' response and the Council's final response were submitted in writing.
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DECISION

1. The application for an award of costs is allowed in the terms set out in the Costs Order 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 costs application and the appellants' response raise two initial matters related to the planning application, the supporting information and technical assessments.

The planning application stage

4. The Council's application is for a full award of all costs incurred as a direct result of the section 78 appeal. This claim is based on submissions that the planning application was deficient and had all the required information been available at the planning application stage, planning permission would have been granted and the appeal avoided.
5. The planning application, dated 8 April 2022, was supported by a short planning statement (just over a page), the original and revised flood risk assessments and a series of plans to identify the application site and to show the proposed layout on a block plan. The red line of the application site extended up to the River Great Ouse and the planning statement confirmed the river formed the northern boundary of the

- site. No additional information was submitted and the Council refused to grant planning permission on 5 September 2022.
6. Planning Practice Guidance advises that costs cannot be claimed for the period during the planning application 'but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.' In identifying examples of the type of behaviour that may give rise to a procedural award against an appellant, the focus is on procedural matters during the appeal process. One example is "only supplying relevant information at appeal when it was requested, but not provided, at application stage."
 7. The planning application was accepted as validly made. The Council has not indicated the outstanding information was requested at application stage. The appellants refer to a lack of engagement by the Council.
 8. It is not possible to say now whether permission would have been granted with the necessary information. The planning balance was not the same, not least because in September 2022 the Council's position on need was very different and was informed by a Gypsy and Traveller Accommodation Assessment completed in 2016. The Accommodation Needs Assessment September 2024 indicates a greater need for sites and the Council accepts a supply of 5 years' worth of sites cannot be demonstrated at the present time.
 9. The appellants disputed the necessity for expert assessments, particularly in respect of highways, ecology, minerals and residential amenity, because the application was for the intensification of an existing use. However, the lawful position regarding the land was not agreed with the Council. The application for a lawful development certificate was submitted shortly before the planning application and the decision to refuse a certificate was made on the same day as a decision on the planning application.
 10. Even if a lawful fallback was established, that would not negate the need to supply all relevant information to support the proposed development for a material change of use. Throughout, the appellants accepted planning permission was required for the development of nine pitches on the land. The intensification argument, in relation to the costs issue, has little justification.
 11. Attention will now be directed to whether unnecessary or wasted expense was incurred as a result of unreasonable behaviour through the appeal process. The procedural grounds identified in the Council's costs application relate to alleged failure to adhere to the appeal timetable, the submission of late information and amendments to the scheme. The chronology of the appeal provides the relevant context.

Unreasonable behaviour

Background and chronology

12. The appeal was made on 6 October 2022. A full statement of case was not submitted because the appellants expected the appeal would be linked to two further appeals made on the same date and all would proceed to the same

- timetable. These appeals were against an enforcement notice alleging a material change of use of the land to 9 pitches and against the Council's refusal to issue a lawful development certificate for a proposed use of land for the stationing of two mobile homes for residential purposes.
13. By the start letter dated 14 October 2022 the Planning Inspectorate confirmed the three appeals were linked and that parties must keep to the timetable. A statement with full details of the case¹ was due on 25 November 2022 and final comments on 16 December, with proofs no later than four weeks before the inquiry. Attention was drawn to the costs regime.
 14. The November statement of case for the section 78 appeal added little to the grounds of appeal. Meanwhile the enforcement notice was withdrawn on 20 October 2022. A new notice was issued on 23 December 2022 but because of a dispute over service, no appeal was made and judicial review proceedings were instigated.
 15. Following the start letter, the Planning Inspectorate made no progress in programming an inquiry until early 2024. My involvement with the appeals began around that time when an inquiry date in May 2024 was under consideration. I reviewed the section 78 and LDC appeals and in a note to the appellants and the Council dated 19 February 2024 I commented on the lack of details in their statement of case. In response the appellants requested the appeals be placed in abeyance because to proceed in advance of the outcome of the judicial review would cause injustice. I agreed to the request and the two appeals remained in abeyance until July 2024.
 16. Shortly after, on 1 August an appeal was submitted against the fourth enforcement notice issued by the Council. The Planning Inspectorate in the start letter of 5 August 2024 requested full details of the case by 16 September 2024. The appellant's statement related only to the enforcement appeal and was confirmed to be in addition to the statement of case for the section 78 and LDC appeals submitted in November 2022.
 17. On 11 November 2024 the parties were informed the inquiry would open on 1 April 2025 into the linked appeals. A Case Management Conference (CMC) took place on 6 December 2024. The summary note stated "As matters stand now, the statements of case lack detail, especially in relation to the technical evidence for the section 78 appeal (such as on ecology, noise, highways). At the latest, full statements of case should have been submitted by 16 September 2024 in accordance with the timetable for the enforcement appeal. The expectation is that the timetable outlined below will be adhered to". Dates were set in December to facilitate preparation of evidence. The appellants agreed to submit full particulars of their case on noise, ecology, highways, minerals safeguarding area, need for traveller sites (and related matters) no later than 31 January 2025. I later agreed to the appellants' request for an extension to this deadline to 5 February (illness was the reason).
 18. This chronology indicates three main points. The appellants did not comply with procedural guidance when making the section 78 appeal in that full particulars of

¹ The Inquiries Procedure Rules states: "statement of case" means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry and a list of any documents which that person intends to refer to or put in evidence.

their case were not submitted when the appeal was made. The timetabling and processing of the section 78 appeal were delayed and not straight forward because of the linking of appeals, the programming by the Planning Inspectorate and the judicial review litigation. The appellants indicated in September 2024 that reliance would be on the November 2022 statement of case for the section 78 appeal.

19. Turning to two specific matters raised by the Council on timetabling following the CMC, there were differing accounts on whether or not the December 2024 dates were met by the appellants. Bearing in mind the intended purpose of engagement, no unreasonable behaviour occurred. The extension to the 31 January deadline was agreed and even though this may have caused inconvenience to the Council, again no unreasonable behaviour occurred.

Topic Areas

20. The Council has highlighted various topic areas to demonstrate that in their view information relevant to the assessment of the development was submitted late and the appellants mis-used the appeal process.
21. Highways. The reason for refusal states the proposed development would lead to the creation of an access and the identified harm relates directly back to this action. The application form indicates no new access would be created, which is supported by additional information provided later. Nevertheless, to comply with policy in the Framework I would expect a short transport statement to demonstrate the means of access was safe for an increase in the number of vehicle movements associated with the new development. The appellants' technical assessment was important in demonstrating the development is acceptable on highways grounds.
22. Ecology. The appellants point to lack of engagement on behalf of the LPA, intensification of a use and a defective enforcement notice as reasons why ecological information was not provided as part of the planning application. There is no explanation as to why the information was not submitted before 5 February 2025.
23. The ecological reports confirm a site survey was undertaken on 2 December 2024 and the reports are dated 2 January 2025. There was an unreasonable delay by the appellants in addressing the reason for refusal. Policy NH/4 is clear that development proposals even on previously developed sites will be expected to include measures that maintain and enhance important features and appropriately incorporate them within any development of the site. The proximity to a County Wildlife Site increased the relevance of the policy requirement in this case.
24. Minerals. The appeal site is in a Mineral Safeguarding Area. The purpose of this designation is to ensure mineral resources are adequately taken into account in all land use planning decisions. Policy 5 places the onus on the developer to demonstrate policy requirements would be met. The appellants' mineral resource assessment dated 30 January 2025 was submitted on 5 February 2025. This assessment was necessary, particularly considering scenario 2, where no lawful residential use had been established.
25. Amenity. The location of the site adjacent to Mitchell Hill Quarry gives rise to specific issues related to the health and living conditions of the occupants. Once the appeal had been made such matters should have been addressed expeditiously by the appellants. In respect of noise, the appellants relied on a

sound survey undertaken on 3 March 2023 and a noise impact assessment dated 24 March 2023, together with reports submitted for the planning application for the quarry in 2018 and a monitoring report dated 2020. The concern about dust also was addressed by reference to evidence related to the quarry application. Therefore all necessary information was available well before 16 September 2024.

26. Conclusion. On all topic areas necessary information comprising particulars of the appellants' case was submitted unreasonably late in the appeal process.

Amendments to the scheme

27. The original red line site location plan (21_1161B_001) showed the site included most of the land between the Fourth Sock Drain and the River Great Ouse. The proposed block plan (21-1161B_003) showed the pitches north of the site access road extended up to the drain. At the CMC the appellant indicated the red line would be amended to exclude the water meadow adjacent to the river. No amended plans were submitted until after I raised the matter again on the opening day of the inquiry.
28. The position of the red line is particularly relevant to the consideration of the effects of the development on ecology and biodiversity, and landscape character and visual amenity. Uncertainty over the appellants' position was increased by their ecological appraisals and biodiversity net gain assessments (submitted 5 February 2025) that in the appellants words "were on the basis of the two different red-line areas, entirely properly".²
29. In conclusion, to inform their own case, the Council's consideration of the proposed development at appeal would have to be based on the submitted plans and the delay in producing amended plans was unreasonable.

Unnecessary or wasted expense

30. Regarding the timing of submission of the full particulars of the case the appellants proposed to put forward at the inquiry, the date of 25 November 2022 was not met, nor was the date of 16 September 2024, related to the enforcement appeal and which the appellants indicated they were working to.
31. The failure to meet the first date probably in practice did not lead to unnecessary expense for the Council because of the early inactivity on the appeal, the court proceedings and the period of abeyance. In addition, the Council's statement of case comprised the officer report on the planning application and hence involved no significant extra work and expense. There is no information in the Council's costs application to contradict this view.
32. The appellants were alerted to concern over the adequacy of the statement of case in my note dated 19 February 2024. When the appeals were taken out of abeyance, the appellants chose not to supplement their case and in September 2024 confirmed their reliance on the November 2022 statement of case. The Council would proceed on that basis in preparing for the inquiry. Any unnecessary and wasted expense would be confined to the period post 16 September 2024.
33. The Council withdrew reasons for refusal 6 and 7 regarding contaminated land and flood risk on 31 October 2024. No unnecessary expense was incurred. The

² Appellants' costs response paragraph 29

highways matters were resolved through a statement of common ground. The highway authority engaged with the appellants' highways consultant when the technical information was produced, leading to the statement of common ground dated 6 March 2025³. No unnecessary or wasted expense was incurred by the Council in relation to the highway matters.

34. Following the CMC the Council was required to submit full particulars of their case on landscape, mineral safeguarding area and need/supply of traveller sites. This work was necessary and no wasted expense was incurred as a result.
35. Moving onto the next stage, proofs from the Council and the appellants were submitted on 12 and 13 March, both parties having requested an extension to the 4 March date agreed at the CMC. The Council confirmed on 28 March by email that it would not defend the section 78 appeal and withdrew all reasons for refusal. At the same time the Council indicated discussions had taken place with the appellants on an appropriate way forward and that previous objections could be resolved through planning conditions.
36. Even though the Council decided not to defend the appeal having re-appraised the planning balance, the appeal continued to proceed to the inquiry, a discussion on planning conditions took place as per standard practice and the appeal remained to be determined. The Council's evidence was not withdrawn and the proofs were helpful in decision making. The expense incurred by the Council in producing the proofs was not wasted except in two matters. Regarding ecology, the uncertainty and confusion over the red line boundary of the site caused the Council to undertake unnecessary work when preparing a proof of evidence and hence unnecessary and, in the end, wasted expense was incurred. The appellants' case on noise, submitted late in the appeal process, included a proof supported by a series of technical appendices. This evidence had to be reviewed by the Council's environmental health team at short notice, which would have led to extra expense over and above that which would have otherwise arisen.

Conclusions

37. For the reasons given above, unreasonable behaviour resulted in the Council incurring unnecessary or wasted expense in respect of:
- the additional costs incurred in producing the ecology proof of evidence through assessment of the development's effects based on the original site boundary, and
 - the assessment of the appellants' noise evidence within a short timescale.
38. A partial award of costs is therefore warranted.

COSTS ORDER

39. 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 Mr Drew Price and Mr James Ball shall pay to South Cambridgeshire District Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the Council in taking account of the original site boundary when

³ Commentary from the highway authority

preparing the ecology proof of evidence and the extra costs incurred in assessing the noise evidence in a short timescale; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr Drew Price and Mr James Ball, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Diane Lewis

Inspector