
Costs Decision

Site visit made on 20 May 2025

by J Burston

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2025

Costs application in relation to Appeal Ref: APP/W1850/W/24/3350526 Site adj. to Arrow Lea, Eardisland, Leominster, Herefordshire, HR6 9BU

- 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 Staples U K Holdings Ltd. for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for 4 No. self-build dwellings with garages.
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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. At paragraph 049, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the substance of the matter at appeal. These include failing to produce evidence to substantiate each reason for refusal on appeal, acting contrary to or not following well-established case law and not reviewing their case promptly following the lodging of an appeal.
4. The application was made in writing and therefore there is no need to rehearse the detailed points made. However, the thrust of the applicant's case is that the Council failed to engage in the planning process or respond to requests for further information on the Council's concerns. Furthermore, it is stated that the Council introduced new issues and justification for their stance and withdrew a reason for refusal late in the appeal process. The appellant asserts that if the Council had engaged with them and determined the application in line with planning policy and guidance the appeal could have been avoided.
5. During the consideration of the planning application the Council rightly consulted the Highway Authority (HA), who responded initially on 30 August 2023 and then following further evidence from the applicant a further response was made, dated 25 September 2023. The latter response recommended that a Road Safety Audit be conducted to identify design changes necessary for highway safety. Whilst not clearly set out in the Planning Officer's Report, the Council considered the use of a planning condition to control this matter, but, as stated in their Statement of Case, a condition(s) would not be appropriate and therefore highway safety was a reason

- for refusal. The failure to agree these matters earlier is unfortunate, but given the comments from the HA, the Council was justified in refusing permission on this basis.
6. Following the submission of the Appeal, the HA were again consulted. The HA comments, dated 16 October 2024, stated that *"The Local Highway Authority notes that the applicant has amended the site layout so that the footpath now terminates within the 30mph zone. While the placement of signage and gateways is not ideal, we likely do not have grounds for refusal based on these factors."* The withdrawal of this reason for refusal was set out in the Council's Statement of Case, dated November 2024.
 7. I have no doubt that the applicant disagrees with the approach to this matter. Nonetheless, the Council clearly reviewed their case promptly following the comments received by from the HA on appeal. Whilst the applicant had to address highway matters in the appeal statement, I am not convinced that in doing so, it has resulted in an unnecessary appeal or wasted expense above and beyond what is normally expected by parties involved in the process, especially given the issues at hand.
 8. The applicant considered that 'ecology' did not form a reason for refusal. However, the decision notice is clear that *"the application fails to adequately demonstrate that the proposed means of waste water disposal adequately protects the water quality of the River Wye Special Area of Conservation."* This matter and its importance in protecting the River Wye SAC is also clearly explained in the Planning Officer's Report, dated 11 June 2024.
 9. I acknowledge that the Council's Ecology Officer responded to the Appeal consultation, dated 23 October 2024, noting that further survey work was necessary due to the original Preliminary Ecological Assessment being out of date. However, this was not substantiated in the Council's Statement of Case and neither where any surveys requested from the applicant on appeal. Therefore, any further work for the appeal carried out by the applicant in this regard would have been of their own volition.
 10. Whilst I note the appellant's frustrations with a lack of correspondence from the Council during the application, the evidence is not clear that ecological matters would have been resolved prior to a decision being made, such that an appeal could have been avoided. Given the evidence submitted, I do not find unreasonable behaviour in respect of this reason for refusal.
 11. Matters relating to the effect of a proposal on the significance of a designated heritage asset, and the character and appearance of an area are broadly subjective matters, involving planning judgement. In reaching its decision and aided by the evidence before it, the Council referred to the relevant development plan policies, and it clearly recognised the location of the appeal site as abutting the Conservation Area, and the sizes and styles of the existing buildings in the locality of the appeal site. The Council's statement provides an explanation of the scale of the proposal, including a recognition of the prominence of the appeal site in public views and its siting relative to the road.
 12. The Council has explained why the proposal would, in its view, have caused harm to the setting and significance of the Conservation Area and to the character and appearance of the area. There is nothing inherently unreasonable with the

Council's assessment of these matters, and it has adequately substantiated the relevant reasons for refusal.

13. Having regard to the evidence before me in respect of the appeal, I do not agree with the applicant that the case was clearly compliant with the development plan. The proposal required a planning judgement to be exercised having regards to the site's specific circumstances. Accordingly, the Council adequately substantiated its refusal reasons through a sufficiently detailed and objective analysis of the proposal's impacts, and why it would not be acceptable, having regard to relevant development plan policies. It has exercised reasonable planning judgement when balancing the relevant benefits and disbenefits of the proposal, and it did not prevent or delay development which should clearly have been permitted. Consequently, I find that the applicant has not incurred unnecessary or wasted expense in the appeal process.

Conclusions

14. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Burston

INSPECTOR