



Costs Decision

Site visit made on 8 May 2025

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Costs application in relation to Appeal Ref: APP/A5840/W/24/3353206

Old Southern Railway Stables, St. James's Road, London SE1 5US

- 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 Catlin Regeneration Ltd for a full award of costs against the Council of the London Borough of Southwark.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the renovation and redevelopment of the existing old forge to provide up to 32 residential units (Class C3 use) and 499sqm of commercial floor space at the ground and mezzanine levels (Class E uses).

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 ("the 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. It goes on to say that "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"¹. At the same time, the costs regime is *not* intended to compensate for any profits which might (reasonably or not) have been anticipated.
3. Paragraph 047 of the PPG gives examples of behaviour which may give rise to a procedural award of costs against a local planning authority in relation to planning appeals, including failing to comply with the requirements and deadlines of the appeal process, and delays in providing information².
4. Paragraph 048 sets out the circumstances in which a local planning authority's handling of the planning application or enforcement notice prior to the appeal lead to an award of costs; it states that "if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation", that "in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period", and that "if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no

¹ Paragraph: 033 Reference ID: 16-033-20140306 Revision date: 06 03 2014

² Reference ID: 16-047-20140306 Revision date: 06 03 2014

- substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether”³.
5. Paragraph 049 states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This could include unreasonably refusing or failing to determine planning applications and, for example, “delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations”, “making vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis”, “acting contrary to, or not following, well-established case law”, or “refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed”⁴.
 6. The examples of unreasonable behaviour set out in the PPG are not intended to be exhaustive, but the applicant’s case falls broadly within those set out in the preceding paragraphs.
 7. The appeal was made against the Council’s failure to determine the planning application. The Council’s submissions in respect of the main appeal – a draft officer report and a refined version of the putative reasons for refusal – together set out why the Council would, had it determined the application, have refused planning permission. However, although the costs application included timelines of e-mail exchanges seeking responses in respect of pre-application advice, and then a decision on the planning application, nothing which is before me (including details of e-mails which mostly related to an abortive attempt to set up a Planning Performance Agreement for the scheme, though they also strayed into other matters) provides a clear explanation of the Council’s reasons for not having reached a decision on the planning application. To my mind, the Council’s behaviour therefore falls squarely within the second example from Paragraph 048 of the PPG cited above.
 8. Turning to the substantive matters, for the reasons which are set out in my main decision, I found that the proposed development would cause significant harm to the character and appearance of the area, including the Old Forge buildings on the appeal site which are part of a Non-Designated Heritage Asset (an “NDHA”). I also concluded in the overall planning balance that the proposal would not represent “sustainable development” in the terms set out in the National Planning Policy Framework (“the Framework”). I therefore dismissed the appeal and refused planning permission for the proposed development; it follows from this that I cannot find in this case that the Council delayed development which should clearly be permitted.
 9. The example given by the applicant to illustrate the Council’s purported reliance on vague or inaccurate information related to an issue raised by the Council at pre-application stage rather than in its officer report or during the appeal. Notwithstanding this, some of the observations set out in the Council’s draft officer report were not entirely accurate, although this sometimes related to comments made by consultees – for example, the erroneous suggestion that the appeal scheme would require the creation of an additional access opening in the boundary

³ Reference ID: 16-048-20140306 Revision date: 06 03 2014

⁴ Reference ID: 16-049-20140306 Revision date: 06 03 2014

- wall to Catlin Street – which had been directly quoted in the report though not ultimately relied on in the Council’s assessment of the scheme.
10. Based on my reading of the conclusion of its draft officer report, the Council may well have misinterpreted the provisions of Paragraph 11 of the Framework. They wrote “the tilted balance would be insufficient to for the Council [...] to grant permission for the scheme and would have been resisted primarily due to the harm caused to the heritage assets”. As I have explained in the planning balance and conclusion section of my main decision, NDHAs are not one of the “areas or assets of particular importance” referred to in Paragraph 11 d) i. of the Framework, and it is therefore necessary to carry out a rather more in-depth assessment of the planning balance. However, even if the Council relied on an inaccurate interpretation of the Framework on this matter, in view of my conclusion in my main appeal decision, I consider it unlikely that a more accurate (or a more obviously accurate) interpretation might have had a significant bearing on the overall outcome of the application.
 11. The applicant’s suggestion that the Council acted contrary to, or did not follow, well-established case law covered a number of issues: material considerations in planning^{5 6}, the role of a council as planning authority versus its role as a landowner⁷, whether the proposed development would be implemented or not⁸, and a previous appeal decision which considered the question of whether there would be a realistic prospect of land performing the use or role sought by development plan policies⁹. However, while I have had regard to the case law and appeal precedents to which I was directed, none went to the heart of the putative reasons for refusal put forward by the Council, or the principal controversial issues in the appeal.
 12. With that in mind, I confess to being somewhat puzzled even now as to why the Council’s response to this claim for an award of costs focused predominantly on putting forward the suggestion that the planning application (and the subsequent lodging of the appeal) was primarily intended to secure an uplift in land values, as there is nothing before me to indicate that that matter was either a material planning consideration in respect of the appeal, or particularly relevant to the points raised in the costs claim. However, even though it strikes me that the Council has (to say the least) taken a somewhat unorthodox approach to responding to this costs claim, this is not evidence that they did not act in line with case law in respect of the planning application or the appeal.
 13. For the reasons set out in paragraph 7 above, it is also evident that the applicant made several requests to the Council for information which were either not responded to or, at best, brushed off. This is unreasonable behaviour within the scope of the final example from Paragraph 049 of the PPG cited above.
 14. There is nothing before me to suggest that the Council has acted unreasonably in respect of the appeal procedure or processes, or which would otherwise fall within the examples from Paragraph 047 of the PPG cited above. Nevertheless, for the

⁵ Newbury District Council v Secretary of State for the Environment [1981]

⁶ Forest of Dean District Council v (1) Secretary of State for Communities and Local Government, (2) Gladman Developments Limited [2016] EWHC 2429

⁷ Enterprise Hangars Ltd v Fareham Borough Council [2023] EWHC 2060 (Admin)

⁸ Satham Millenium Ltd and Secretary of State for Housing, Communities and Local Government and Warrington Borough Council, [2019] EWHC 2631 (Admin)

⁹ PINS Ref: APP/H6955/A/19/3238470, relating to a proposed development of up to 74 dwellings within the County Borough of Wrexham.

reasons I have just given I consider that, in failing to adequately explain its reasons for not determining the planning application, in not providing reasonably requested information and, in all likelihood (though in a limited way), relying on inaccurate assertions, the Council has behaved unreasonably. However, in order to make an award of costs, I need to be satisfied that any unreasonable behaviour resulted in unnecessary or wasted expense.

15. The applicant's case in the main appeal and this claim for costs is essentially that they submitted "a policy-compliant scheme" which "accords with the development plan", that the presumption in favour of sustainable development set out in the Framework – the so-called "tilted balance" – "weighs even further in favour of granting permission", that "permission should be granted without delay", and that there were "no material considerations [which indicated] otherwise. These are matters which have necessarily been addressed in at length in my main decision.
16. The applicant asserts that the Council's behaviour has led to them "being made to defend a perfectly good proposal against two unreasonable purported reasons for refusal". Notwithstanding that the Council has clearly, in my view, made missteps in dealing with the planning application (and which, as I have set out above, at times amounted to unreasonable behaviour), both putative reasons for refusal which it put forward were well-founded. It is of considerable relevance to this costs claim that, on balance, I agreed with the Council's overall decision and dismissed the appeal.
17. The applicant has evidently been determined to try to secure planning permission for the site. Given this, it seems likely to me that, even if the Council had responded better to requests for information, had determined the application in time or provided an adequate explanation for not having done so, and had explained some its reasoning a little more clearly than was done in its draft officer report, the case would still have ended up going to appeal. The applicant would therefore have incurred the costs of appeal in any event.

Conclusion

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and an award of costs is not warranted.

M Cryan

Inspector