
Costs Decision

Inquiry held on 31 January, 20-21 March, 12-13 June 2025

Site visit made on 19 March 2025

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2025

Costs application in relation to Appeal Ref: APP/N5090/W/24/3346789

Land Northwest of Mays Lane, Arkley, Barnet, EN5 2AH

- 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 the Council of the London Borough of Barnet for a partial award of costs against Patrick Casey.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as a 'material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use'.
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Decision

1. The application for an award of costs is allowed 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. The PPG also explains that an appellant is at risk of an award of costs against them if there is a lack of co-operation, they fail to adhere to deadlines, only supply relevant information at the appeal when it was requested, but not provided, at the application stage and introduce fresh and substantive evidence at a late stage necessitating an adjournment or extra expense.
4. The Council has structured its application for an award of costs under the headings of Great Crested Newts, Tree Protection, Flood Risk and Vehicular Access.

Great Crested Newts (GCN)

5. The planning application was made in September 2023 without any ecological information despite standing advice provided by Natural England, which the appellant's representatives would have had access to. Following a request from the Council, a Preliminary Ecological Appraisal was ultimately submitted in November 2023. This identified the presence of nearby ponds and suitable terrestrial GCN habitat within the appeal site and wider area. It also explained the likelihood of an offence occurring if GCN are present and the scheme went ahead without a licence. As such, environmental DNA (eDNA) testing of the ponds was recommended to determine the presence or otherwise of GCN. The authors of the PEA did not recommend that this matter be addressed by condition.

6. It would, and should, have been self-evident to the appellant's planning consultants, who are experienced practitioners, that the Council would need to see the results of the testing before positively determining the application. However, the application was not withdrawn despite the absence of this important evidence. The Council understandably refused the application in the absence of testing and surveys given the provisions of national policy¹ and legislation².
7. The appellant submitted their appeal in June 2024 with the results of eDNA testing. However, the report accompanying this explained that GCN DNA had been found in Ponds 1 and 6 and therefore, at that point in time, a licence from Natural England would be required. The report sets out the two options for applying for a licence. The appellant has never sought to make a financial contribution towards District Level Licensing (DLL) and nor did Mr May mention DLL in his proof as a potential option. It is therefore unclear why the appellant's team now references this in their cost rebuttal. Accordingly, the applicable finding in the eDNA report is that further surveys would be required to support a licence application. Surveys would also be necessary to determine whether a license would likely be granted.
8. It would have been possible to undertake the traditional surveys in the 2024 survey window because access to Ponds 1 and 6 had been given. As the appellant's own evidence recommended the completion of further surveys, the Council contacted the appellant's agent and advised that they withdraw the appeal. The appellant did not do this, instead being of the view that surveys could be conditioned.
9. The Council set out its position again in its Statement of Case (SoC). This was later supported by comments from Natural England and a legal opinion explaining why the matter could not be addressed by a condition. The issue was discussed at the Case Management Conference (CMC) where the appellant appeared to accept that it could not be addressed by a condition. Indeed, I was advised that a mitigation strategy for GCN would be prepared and submitted as late evidence.
10. Despite what was discussed at the CMC, the appellant's team instead provided a 'Precautionary Method of Work' (PMoW) prepared by Mr May, a new (and third) Ecologist, aimed at avoiding any impact on GCN and thus the need for further surveys and mitigation. This was both the submission of late evidence and an unreasonable evolution of the appellant's case.
11. The Procedural Guide: Planning Appeals is quite clear that an appeal should only be made when the appellant is able to make their full case. It also states that the Statement of Case should be accompanied by all the evidence the appellant intends to rely on. This is to prevent inefficiency and delay from parties having to revisit submissions out of sequence. Consequently, the submission of the PMoW was unreasonable behaviour as it could have been submitted with the appellant's SoC. The Council had been put to unnecessary expense in dealing with the condition argument as well as having to revisit its case in response to the appellant evolving his. The Council also had to re-engage with Natural England.
12. When Mr May gave evidence at the Inquiry, it transpired that he had not visited the site and had been incorrectly advised by the appellant's team that traditional surveys of Ponds 1 and 6 were impossible due to restricted access. In any event, the PMoW would be deeply flawed if GCN are present because there would be no

¹ Paragraph 192 of the National Planning Policy Framework and Circular 06/2005, including Paragraph 99

² Regulation 53(2)(e) of the Conservation of Habitats and Species Regulations

- way of avoiding an impact on them. For example, exclusion fencing would be required and constructing the access would necessitate works to hedgerow and rough grassland on the site perimeter. By the end of giving evidence, Mr May was effectively in agreement with the Council's position that traditional surveys are necessary and a PMoW would be inappropriate in this instance as a means of avoiding an impact on GCN. It also turned out that he had been instructed that morning, almost three months after the Inquiry opened, to undertake surveys.
13. The appellant's position had effectively collapsed, with the evidence provided to date, including that relating to Licensing Policy 4, being an inaccurate, belligerent and ultimately hopeless attempt to argue against the consensus of Ecological experts, including Natural England and the appellant's own advisors. It had been both unreasonable and a waste of Inquiry time to pursue an argument that traditional surveys were unnecessary. Indeed, had Mr May been properly briefed about access to Ponds 1 and 6, then he would probably have advised the appellant's team of the correct approach in the same way he eventually advised the Inquiry. Indeed, the Council were put to unnecessary and wasted expense in fielding its own witness on this matter as well as addressing Mr May.
 14. Despite what transpired when Mr May gave evidence, the appellant's team sent an extraordinary email to me on the 4 April stating that they still had an 'arguable position' regarding their reliance on a PMoW. However, in doing so they also asked to submit traditional surveys. Given that this would be substantive technical evidence that would not be submitted until June, which at that point was some time after the Inquiry was due to close, they were advised that it would be unlikely that surveys would be admitted as late evidence.
 15. Due to an injury to one of the advocates, the final days of the Inquiry were postponed from April to June. This fortuitously gave the appellant's time to undertake the surveys which they had hitherto been adamant were not required. The surveys were completed by early May 2025, but the report was not shared until the evening before the Inquiry resumed on the 11 June. It is unclear why. Had the report been shared earlier, in part or in full, then the Council could have reviewed it before the Inquiry resumed. Instead, it was necessary to adjourn the Inquiry to allow all parties to review the new findings submitted as late evidence.
 16. In submitting the new evidence, the appellant's team acknowledged that there would be costs implications for the appellant but wished to make the submission despite this. The Council's reasonable approach to the late evidence flowed from this concession. It is therefore perplexing and somewhat disappointing that the appellant's team have provided a rebuttal to the Council's application for an award of costs in respect of this.
 17. Considering the foregoing, I have no hesitation in finding that unreasonable behaviour, as described in the PPG, has occurred in respect of the appellant's response to the Council's reason for refusal pertaining to the effect on GCN. This unreasonable behaviour has resulted in unnecessary and wasted expense. Indeed, the effect on GCN need not have been a principal controversial matter if the appellant had adopted earlier the position that they ultimately ended up at - that traditional surveys were evidently necessary, as advised by Ecologists.

Tree Protection

18. The boundaries of the appeal site are marked by hedgerows and trees, some of the latter are subject to a preservation order. The appellant was obviously aware of the trees as they acknowledge such on the application form, which also explains the need to provide a full tree survey. However, a tree survey was not submitted with the application. The application was refused in the absence of one.
19. However, I share the view of the appellant that this reason for refusal was curious given the information the Council had before it on the 27 November 2023, principally a plan showing the root protection areas of trees. This plan demonstrated that the proposed development would be located outside these root protection areas. It is unclear what the Arboricultural Survey submitted with the appeal added, as upon reviewing it the Council still recommended conditions relating to tree protection, levels and services. There has been no unreasonable behaviour from the appellant in respect of this matter. Even if there had, the Council removed its objection before preparing its SoC and therefore were not put to any unreasonable expense in addressing the point.

Flood Risk

20. In an email dated 20 October the Council explained to the appellant that a Flood Risk Assessment (FRA) should be undertaken despite the site being in Flood Zone 1. This was because the proposal would introduce a more vulnerable use and the land was at risk from other sources of flooding, including surface water, ground water and artificial sources (presumably the nearby reservoir). This advice was consistent with Paragraph 173 and Footnote 59 of the National Planning Policy Framework as in force at the time³. An FRA and detailed drainage strategy was not provided, although this was seemingly on the advice of the Council given the other concerns it had with the proposal. The drainage strategy was necessary to ascertain whether the proposal would increase the risk of flooding elsewhere, given the proposed solution was a soakaway. In the absence of an FRA and drainage strategy the Council understandably refused the application.
21. The appeal was subsequently submitted with an FRA and drainage strategy. The Council outlined in its Statement of Case a series of concerns with these documents. The appellant therefore made further submissions at the Proofs of Evidence (PoE) stage. Nevertheless, it is important to note that PoE should not be used to introduce new evidence⁴. As already mentioned, all information should be submitted with the Statement of Case (SoC). Proofs of Evidence are a forum for existing evidence to be marshalled and commented upon by witnesses.
22. The appellant's further submissions therefore constituted late evidence that could have been submitted earlier. Indeed, had the appellant's team properly engaged with the Council before submitting the appeal, as encouraged by the PPG⁵, they could have adduced a robust FRA and drainage strategy with their SoC. This would have enabled the Council to remove its objection very early on in the appeal process, as it did with the tree issue. This would have negated the costs incurred by the Council in addressing this matter in its SoC, providing a PoE on the topic and then reviewing late evidence out of sequence.

³ Now Paragraph 181 and Footnote 63

⁴ Paragraph 11.12.4 of the Planning Appeals: Procedural Guide

⁵ Paragraph: 001 Reference ID: 16-001-20140306

23. Considering the foregoing, unreasonable behaviour, as described in the PPG, has occurred in respect of the appellant's response to the Council's reason for refusal pertaining to flood risk and drainage. This unreasonable behaviour has resulted in unnecessary and wasted expense.

Vehicular Access

24. The application was refused in the absence of a transport statement, including swept path analysis, that demonstrates vehicles can safely access and egress the site. I have seen email correspondence appended to Mr Hurlstone PoE which demonstrates that attempts were made to contact the Council before the appeal was submitted to ascertain the precise nature of their concerns. This is because the appellant's highway consultant considered there to be some contradiction and ambiguity in the committee report and was therefore unclear what the Council's concerns were, especially as the Highway Officer had not objected to the scheme subject to the imposition of conditions.,
25. The response from the Council was that the issue would be addressed once an appeal was submitted. As it transpired, this was an unhelpful response. This is because the appeal was submitted without all the information the Council wanted to see. Had there been better engagement from the Council before the appeal was submitted, they could have withdrawn their concerns and need not have addressed the topic in their SoC (other than to withdraw its concerns), as it ultimately did when the information was submitted.
26. Moreover, during the Case Management Conference the appellant's team had signposted their intention to submit as late evidence the information the Council was seeking on highway safety matters 'as soon as possible'. The information was ultimately submitted in sufficient time to negate the need for the Council to prepare a PoE on highway matters. Considering the foregoing, unreasonable behaviour, as described in the PPG, has not occurred in respect of this matter.

Costs Order

27. 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 Patrick Casey shall pay to the London Borough of Barnet, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of addressing matters relating to Great Crested Newts and flood risk and drainage; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr Patrick Casey, 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.

Graham Chamberlain
INSPECTOR