



Costs Decision

Hearing held on 18 February 2025

Site visit made on 19 February 2025

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2025

Costs application in relation to Appeal Ref: APP/W0734/W/24/3351886

Nunthorpe Grange, Nunthorpe, Middlesbrough, TS7 0PD

- 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 Persimmon Homes Teesside for a full award of costs against Middlesbrough Council.
 - The appeal was against the refusal of planning permission for a development described as: Erection of 69 residential dwellings with associated access, landscaping and infrastructure.
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Decision

1. The application for an award of costs is refused.

Preliminary matters

2. Both parties have made applications for an award of costs in this appeal. The Council's application for costs is the subject of a separate decision.

Reasons

3. 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.
4. The appellant's costs application is predicated on the substantive grounds of preventing or delaying development which should clearly be permitted; imposing a condition which does not meet the relevant tests; requiring a planning obligation which does not meet the relevant tests; refusing planning permission on a ground capable of being dealt with by condition; and not determining similar cases in a consistent manner.
5. I have found that the pedestrian and cyclist link between the appeal site and Nunthorpe Gardens is required by the overall policy context. Whilst the Council only referred to Policy CS4 of the Middlesbrough Core Strategy in the reason for refusal, which was perhaps an omission on its part, it does not preclude from consideration any other relevant policies.
6. The matter of whether a "Grampian" style condition would have been appropriate is covered in the main decision and was clear that at the time that the planning application was determined the appellant's position was that the land required for the link to Nunthorpe Gardens was not available to them. The Council had also considered the appellant's proposed alternative link and concluded that it would not be

a suitable route to meet the policy requirement irrespective of any practical difficulties or uncertainties in providing this. I have also found this to be the case. In these circumstances it could reasonably be held that there was no reasonable prospect of a link being provided within the time period for commencing the development and that a "Grampian" style condition would not be appropriate.

7. Consequently, at the time the Council was considering the planning application it was by no means clear that the permission should be granted or that it could be made acceptable through planning conditions. Notwithstanding that between the decision by the Council's planning committee and the hearing circumstances changed, it was not unreasonable for the Council to refuse planning permission having regard to the circumstances at the time.
8. The appellant's arguments that the Council sought a condition and a planning obligation which did not meet the relevant tests are reliant on the grounds that the footpath/cycleway link is not required by policy. As I have found that the link is required by the overall policy context, these arguments must fail.
9. With regard to the final ground for seeking costs, not determining similar applications in a similar manner, I have had sight of the Committee report for the previous application and the associated appeal decision. The matter of the lack of a footway/cycleway link to Nunthorpe Gardens and the potential difficulty in achieving this was considered in the Committee report although it did not ultimately form part of the reason for refusal.
10. Although I have not been provided with all of the documentation in respect of the previous appeal, it does not appear that the matter of the footway/cycleway link was expressly put before or considered by the Inspector in that case. Whilst the Council at that time appear to have considered that a Grampian style condition may have been appropriate at that time, I have no information regarding what that decision was based on beyond a statement in the Committee report that the appellant (at that time the applicant) was in negotiations to enable the footpath link to be provided and the appellant was of the view that this point could be covered by a suitably worded Grampian condition.
11. What is clear, however, is that during the course of the current application, this transpired to be more easily said than done. When the current application was first considered by the Council's Planning Committee in December 2022 the situation was much the same as at the time of the previous appeal although it was anticipated that an agreement would be reached in 2023. In these circumstances, it was not unreasonable for the Council to defer making a decision to allow the matter to be resolved. Despite the passage of time, at the time the application was finally determined in 2024 the appellant's position was that the required land was not available. Whilst the two schemes may both have been for residential development on the same site, the material considerations were different, and it was not unreasonable for the Council to come to the decision that it did.

Conclusions

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

John Dowsett

INSPECTOR