



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 Middlesbrough Council for a full award of costs against Persimmon Homes Teesside.
 - 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 appellant'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 Council's application is on both procedural and substantive grounds. The procedural grounds are that the appellant supplied information at the appeal stage which was not provided during the consideration of the application; that information was provided late in the appeal stage; the appellant did not respond to comments on the draft legal agreements in a timely manner; and that the appellant attempted to pressure the Council into conceding the appeal by threatening an application for an award of costs shortly before the hearing was due to sit.
5. The Council's application on substantive grounds is that the appellant has failed to provide any conclusive evidence that a safe, secure and attractive route for pedestrians and cyclists could be achieved.
6. With regard to the procedural grounds, although the appellant's appeal statement sets out that agreement had been reached with the landowner to purchase the land to become the legal landowner, it was not until shortly before the hearing opened that an undated letter was provided which sets out that the landowner had agreed in principle and subject to contract) to either; transfer the land to the appellant or grant an easement over the land for pedestrian access only. It was not until the

hearing itself that verbal confirmation was given by the appellant's representative that the purchase of the land required for the link and the price to be paid had been agreed. Whilst this was extremely late in the appeal process, it was, to an extent, foreshadowed in the appellant's Appeal Statement.

7. Circumstances can change during the course of an appeal and it is important that decisions are made on the basis of the most up to date information. That said, the appellant's principal argument throughout the appeal was that the link was not necessary at all or that it could be provided on an alternative route. These arguments did not change. Whilst it is inconvenient that new information became available late in the process, it does not to my mind cross the threshold into unreasonableness.
8. In terms of the negotiations in respect of the legal agreements, from the information provided, taking account of the fact that the drafts were provided to the Council after normal working hours on Friday 20 December 2024 the Council responded with comments on these in 12 working days. I have not had sight of the comments made, however the appellant submitted revised drafts in 16 days working days. This is not an excessively long time. It is unfortunate that the timings were such that the revisions were sent back to the Council the day before the deadline for the drafts to be submitted to the Planning Inspectorate. However, at this stage the legal agreements were still in draft form and were still subject to discussion at the hearing. Had there been remaining concerns these could have been raised prior to the hearing and discussed at the hearing itself if required. I do not find this to be unreasonable.
9. With regard to the matter of the timing of the appellant's application for costs, I have considered the email from the appellant to the Council in respect of the costs application. It is open to the parties at an appeal which is to be heard before an Inspector to make an application for costs at any time up until the close of the hearing. The costs regime should absolutely not be used as a mechanism to put pressure on the opposing party in an appeal. However, having regard to all of the evidence put to me in this case and what I heard at the hearing, although the email from the appellant sails fairly close to the wind in this respect, I do not consider that this was the actually the intention here.
10. Turning to the substantive ground regarding the adequacy of the appellant's evidence. I have found that the appellants arguments that the footway/cycleway link is not required and that a suitable alternative route is possible have not been made out. Nonetheless, the appellant has demonstrated through other subsequent written and oral evidence and the submitted Unilateral Undertaking that the proposal can be made policy compliant. Whilst this came at a late stage in the proceedings, I have found above that this was not unreasonable. Similarly, I do not find unreasonable behaviour on the substantive grounds.

Conclusions

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

John Dowsett

INSPECTOR