



Costs Decision

Online Hearing held on 14 March 2025

Site visit made on 17 March 2025

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Costs application in relation to Appeal Ref: APP/Y2003/W/24/3351201

91 Barrow Road, Barton upon Humber DN18 6AE

- 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 Mr Ben Pearson for a full or partial award of costs against North Lincolnshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for permission in principle for 'demolish existing dwelling and outbuildings, form revised access to highway and erect up to nine new dwellings.'
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Decision

1. The application for a full or partial award of costs is refused.

The submissions for Mr Ben Pearson (Applicant)

2. The costs application was submitted in writing. The following additional points were made orally at the Hearing.
 - Substantive – Unreasonable behaviour regarding the nature of permission in principle and the matters that have been considered. The applicant could demolish the house and outbuildings.
 - Substantive – Fundamental misunderstanding of law rooted in the argument that a Lawful Development Certificate (LDC) is required to undertake lawful permitted development. A LDC is not required, all it does is give comfort to the applicant. There is a need to compare the current position with the proposal. Permitted development rights have not been removed from the site and what has been carried out is lawful. No enforcement action has been taken to date.
 - Substantive – The LPA's whole approach has been wrong.
 - Procedural – Failed to determine the application without explanation.

The response by North Lincolnshire Council (Local Planning Authority – LPA)

3. The response was made in writing. The following additional response was made orally at the Hearing.
 - A LDC provides clarity in terms of permitted development rights. Any permitted development should be in accordance with The Town and Country Planning (General Permitted Development) (England) Order 2015.

Reasons

4. 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 process¹.
5. The applicant submits that the LPA has behaved unreasonably in relation to both substantive and procedural matters, which has caused him to incur unnecessary expense in the appeal process.
6. The substantive matters concern the LPA preventing or delaying development which should clearly be permitted, having regard to the nature of an application for permission in principle; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions at the technical details consent stage; acting contrary to, or not following, well-established case law and misinterpreting the National Planning Policy Framework (the Framework); and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
7. The applicant submits that the nature of an application for permission in principle does not entitle the LPA to pursue the arguments that it has. In doing so, it has prevented and delayed development that should clearly be permitted.
8. As set out in my Decision, deciding whether the contested issues of archaeology and the demolition of the existing building are 'relevant' to the matters of location, land use and amount of development and how, is a question of evaluative judgement for the decision maker. In this instance, I have agreed with the LPA, in that the issues are central to the considerations of whether or not the proposal is acceptable in this specific 'location'. Moreover, given my conclusions on the main issues, the LPA has not prevented or delayed development which should clearly be permitted. Therefore, the LPA's approach does not constitute unreasonable behaviour.
9. The applicant contends that the LPA has not substantiated each reason for refusal; been inconsistent in its determination of applications on the site; and made vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
10. With regard to the first reason for refusal on appeal, I acknowledge that the wording used is a repeat of that included in the previous decision notice², even though extensive groundworks have been undertaken, resulting in a change to the circumstances within the site. Nonetheless, when taken in conjunction with the detailed Committee Report and supporting documents, I am satisfied that the LPA's evidence substantiates this reason for refusal.
11. It is for the applicant to make their case in line with the requirements of local and national policy and guidance. It is reasonable to conclude that any perceived vague, generalised or inaccurate assertions as to the proposals impact in this

¹ Planning Practice Guidance, Paragraph: 028 Reference ID: 16-028-20140306.

² Application Ref: PA/2021/223.

- respect, are likely due to the information before the LPA when it considered the application. Given that the applicant was informed that additional information was needed to evidence the claims made, it was not unreasonable of the LPA to reach the conclusions that it did.
12. Additionally, the LPA acknowledges the LDCs and broader permitted development fallback position of the applicant in its evidence. That it has attached a different weight than the applicant to this consideration is a planning judgement which it is entitled to, and does not amount to unreasonable behaviour.
 13. In relation to the second reason for refusal on appeal, the information provided by the LPA as to why it considers the existing building to be a NDHA is taken from a detailed assessment, by qualified professionals against criteria used by Historic England³. In these regards, it adequately substantiates this reason for refusal and supports an objective analysis of the proposals impact.
 14. The LPA do not consider the demolition fallback position raised by the applicant as part of its assessment of the application. However, I can find no explicit reference to this matter in the applicant's application or written appeal submissions, only within this costs application and in discussion at the Hearing, which the LPA has responded to. As such, this does not constitute unreasonable behaviour on the LPA's part.
 15. I am sympathetic to the applicant's view that introducing the second reason for refusal demonstrates a lack of consistency in decision making from the previous application and appeal in 2021 and 2023 respectively, particularly since the existing building has been on the local Historic Environment Record since 2011. However, I note that the area for the Barton-Upon-Humber Neighbourhood Plan (the emerging NP) was designated in 2020, and the production of the appraisal on NDHAs, which the applicant was informed of and which supports relevant Policy BNDP10 of the emerging NP, being undertaken in 2023/24. These are material changes to the information and policy context against which applications are assessed. On this basis, I find that the LPA's approach was reasonable.
 16. The applicant advances that the matters raised were ones that could be dealt with by conditions at the technical details consent stage. Given my conclusion that the contested issues are relevant to this application/appeal for permission in principle, and that it is not possible for conditions to be attached to this stage, the LPA did not refuse an application on a planning ground capable of being dealt with by conditions, and its behaviour was reasonable in this respect.
 17. The applicant asserts that the LPA failed to follow well-established case law and misinterpreted the Framework⁴ in relation to Paragraph 209 which sets out that where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision. This claim, which is supported by Counsel⁵, is based on the premise that there is no surviving archaeology within the site. Taking into account the LPA's stance that insufficient evidence has been provided to confirm the presence or not of any archaeological remains, which I agree with, and the, albeit lawful,

³ The Barton-Upon-Humber Non Designated Heritage Assets Appraisal, by TheUrbanGlow Design & Heritage Limited, dated 2024.

⁴ *Bohm v SSCLG* [2017] EWHC 3217. *Bohm v Secretary of State for Communities and Local Government* [2017] EWHC 3217 (Admin) and Paragraph 209 of the Framework.

⁵ Counsel's Opinion dated August 2024.

- groundworks undertaken by the applicant, I find that reference to Paragraph 209 of the Framework by the LPA does not constitute unreasonable behaviour.
18. The applicant submits that the LPA has persisted in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable. The Inspector of the previous appeal found matters of character and appearance and highway safety and congestion to be acceptable, but that the harm to the identified archaeological remains constituted grounds to dismiss the appeal. As it has not been adequately demonstrated that the site holds no archaeological interest, I find it is reasonable of the LPA to pursue this matter.
 19. Drawing all of the above together, I conclude that the LPA has not demonstrated unreasonable behaviour in relation to substantive matters.
 20. The procedural matters concern the LPA's lack of co-operation with the applicant and failure to adhere to deadlines.
 21. The PPG states that the behaviour of a LPA which may give rise to a procedural award of costs relates to unreasonable behaviour 'at the appeal'⁶. There is no substantive evidence before me which demonstrates that the LPA did not co-operate with the applicant during the appeal. The applicant's claim of misconduct by LPA officers relates to the determination of the application. Even if I took this matter into account, given the different versions of events before me and my conclusions on the main issues, they do not conclusively demonstrate unreasonable behaviour on the LPA's part, or that the appeal would have been avoided.
 22. In terms of where a LPA's handling of a planning application prior to an appeal might lead to an award of costs, the PPG advises that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. Additionally, in any appeal against non-determination, the LPA 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 period⁷.
 23. The planning application was received on 26 June 2024 and made valid on 3 July 2024, with a decision date deadline of 7 August 2024. The submitted email correspondence shows that following validation, the applicant was kept informed of the application's progress. Relevant to the decision date deadline, this included a revised consultation deadline of 19 August 2024⁸, and that it had been called in to Planning Committee by Barton-Upon-Humber Town Council⁹. The earliest Committee that the application could be taken to was 4 September 2024, and a request for an extension of time until 11 September 2024 was sent to the applicant on 20 August 2024. An appeal on the basis of non-determination was submitted to the Planning Inspectorate on 3 September 2024. Nonetheless, the application was considered at Committee on 4 September 2024 and a 'decision notice'¹⁰ was issued on 12 September 2024.

⁶ National Planning Practice Guidance, Paragraph: 047 Reference ID: 16-047-20140306.

⁷ National Planning Practice Guidance, Paragraph: 048 Reference ID: 16-048-20140306.

⁸ Due to administrative error.

⁹ Referenced in email correspondence dated 19 July and 20 July 2024.

¹⁰ Not a formal 'decision', as jurisdiction transfers from the LPA to the Planning Inspectorate to determine the application/appeal.

24. The date of the informal 'decision notice' was just over five weeks after the decision date deadline. However, the evidence explains the administrative and committee scheduling reasons for the delay. These reasons were properly explained to the applicant in correspondence at that time, including a request for an extension of time, and have been reiterated at the appeal.
25. Although the application was for permission in principle, given the planning history of the site and the representations received against the proposal, it is reasonable that it was called to Planning Committee by the Town Council. Additionally, the Committee Report and 'decision notice', with reasons for refusal, fully explain why permission in principle would not have been granted had the application been formally determined within the relevant period.
26. Consequently, I find that the LPA have not demonstrated unreasonable behaviour in relation to procedural matters.

Conclusion

27. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and a full or partial award of costs is not warranted.

F Cullen

INSPECTOR