
Costs Decision

Site visit made on 4 August 2025

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Costs application in relation to Appeal Ref: APP/E2340/W/25/3366885 Land East of Colne Road, Earby, BB18 6XZ

- 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 Dalesview Developments Ltd for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 39 dwellings.
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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 gist of the Applicant's claim is that the Council behaved unreasonably by refusing planning permission against the advice of its own planning officers and statutory consultees. On landscape, the Applicant argues that every attempt was made to resolve the concerns raised by the West Craven Planning Committee including the submission of amended plans. On flooding matters, the Development Management Committee was advised by senior officers that a decision to refuse the application due to flood risk would represent a significant risk of costs being awarded against the Council in the event of an appeal. The Applicant also argues that the reasons for refusal have not been substantiated by the Council on appeal and this has resulted in the unnecessary expense of the appeal.
4. In its Costs Response, the Council points out that Members of the Planning Committee are not bound to follow the advice of officers provided it produces evidence to support its decision in all respects. On landscape matters, and having visited the site, the Committee concluded that the proposed development would have an unacceptable visual impact. This is a matter of planning judgement that it is reasonable for the Committee to make their own judgement on. On flooding matters it is contended that the Committee raised legitimate issues regarding the potential for the development to increase off-site flood risk. According to the Council both reasons for refusal have been fully substantiated through the appeal process.
5. On any fair-minded analysis, the Council's approach to flooding matters (RfR2) must be seen as concerning. A planning update was circulated prior to the Committee meeting. This reported that the Lead Local Flood Authority, Yorkshire

Water and the Environment Agency had both withdrawn their objections to the appeal scheme. Similarly, the Earby and Salterforth Internal Drainage Board had commented that should surface water enter the Board's district then separate consent would be required under the Land Drainage Act.

6. Beyond a collection of undated photographs showing standing water on Colne Road and the appeal site, the evidential basis for RfR2 remains altogether unclear. The Council's submissions at the appeal stage were notably vague and unconvincing and amounted to a couple of short paragraphs within its Appeal Statement (5.4 & 5.5). No technical evidence was adduced to discredit or repudiate the findings of the Appellant's Flood Risk Assessment. Moreover, there was no explanation as to why the Committee's concerns could not be resolved by planning conditions which was the advice of the Council's specialist consultees and is the established way of dealing with such matters.
7. While the Minutes of the 4 June 2024 and 15 April 2025 Committee meetings were submitted by the Council with its Appeal Questionnaire, these are limited to a record of the decision and the reasons for refusal. They do not include the kind of basic information that one would normally expect such as who spoke in favour and against the application, what verbal advice was given by officers, details of the debate and finally how Members voted. In light of these omissions, anyone reading the Minutes would have no idea how or why Members came to reject the advice of its professional officers and refuse the application on the grounds they did. I find that quite remarkable given that this was a major housing scheme where the Council knew there was a strong likelihood of an appeal and cost application.
8. Accordingly, in relation to RfR2, I find that the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact and refused planning permission on a ground capable of being dealt with by conditions. The unreasonableness of the Council's decision was compounded by the fact that both Committees were expressly advised that there *"was a significant risk of costs being awarded to the Council in the event of an appeal"*. Such advice would not have been given lightly and in these circumstances, I find it surprising that the decision of West Craven's committee was subsequently upheld by the Development Management Committee which clearly had an obligation to consider the matter with the upmost care.
9. With regards the Council's first reason for refusal (RfR1), this involves a matter of judgement concerning the character and appearance of the area. In such cases an award of costs will rarely be justified provided that realistic and specific evidence is provided about the consequences of the proposed development. In this regard, the Council's landscape evidence cannot reasonably be described as anything other than scant and again amounted to just two paragraphs (5.2 & 5.3) in its Appeal Statement. Nonetheless, in giving the Council the benefit of some very significant doubt, I consider that sufficient evidence to support RfR1 was provided.
10. However, the matter does not end there as the Council had a duty under paragraph 11d) of the National Planning Policy Framework (NPPF) to weigh the identified harms against the benefits of the scheme. There is no evidence before me to demonstrate that Members did this or grappled with paragraph 11d) in any meaningful way. The only balancing exercise before me is contained within paragraph 5.9 of the Council's Appeal Statement. Here it is stated that the identified harms comprising significant landscape harm and the risk of off-site flooding, would

significantly and demonstrably outweigh the moderate benefits of the scheme (my emphasis). However, that balancing exercise is patently inconsistent with the finding in paragraph 5.8 that the delivery of 39 houses in a district with a 2.8 five-year supply of housing should carry “*significant weight*”. Therefore, even on the Council’s own evidence the harms were not “*significantly and demonstrably*” outweighed by the benefits. Accordingly, had the Council carried out a robust and cogent balancing exercise giving ‘*significant weight*’ to the delivery of housing, and not behaved unreasonably in respect of RfR 2, I find it most unlikely that the application would have been refused.

11. In conclusion, I find that the Council:

- failed to produce evidence to substantiate RfR2 on appeal;
- made vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis;
- Refused planning permission on a planning ground capable of being dealt with by conditions, and
- failed to carry out a cogent and robust balancing exercise as required by government policy in NPPF paragraph 11d).

12. Based on the foregoing I consider that a full award of costs is justified.

Costs Order

13. 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 Pendle Borough Council shall pay Dalesview Developments Ltd, the costs of the appeal proceedings described in the heading of this decision [limited to those costs incurred in]; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Pendle Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D M Young

INSPECTOR