



Costs Decision

Hearing held on 25 and 26 June 2025

Site visit made on 26 June 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Costs application in relation to Appeal Ref: APP/U2750/W/25/3361677

Land off Carr House, Snainton, Scarborough YO13 9BL

- 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 North Yorkshire Council for a full award of costs against Mulgrave Developments Ltd.
 - The appeal was against the refusal of planning permission for the demolition of an agricultural barn and the erection of 19 dwellings together with the extension and conversion of the existing dwelling to form two houses, with associated access from and works to Green Lane, drainage and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for North Yorkshire Council (“the applicant”)

2. The costs application was made in writing at the hearing. The following additional points were made orally.
3. In relation to the hearing, it is now more evident to the applicant, and we would like to highlight the time spent on the first day, as you will be aware there were a number of hours spent discussing which plans were being relied on and the various iterations of those plans and which revision of the plans they actually related to. The applicant has had to prepare for the hearing without clarity as to which plans were being put forward until the appellant clarified this in their email upon your request a matter of days prior to the hearing. So, the fact that the applicant has had to prepare its evidence based on so many variations has clearly been particularly costly, especially given that the appellant seemed to not actually be putting forward the original scheme in terms of the evidence presented in its Statement of Case, which focused on the revisions instead. There were then, even after they were clarified, various matters in terms of the specific details that only came to light during the appeal, such as the moving of Green Lane northwards and the red line boundary issue. The applicant had spent a lot of time on that matter prior to the hearing trying to compare plans and make sense of what was in front of it. This needed to take place in the first instance before the various officers could comment on the proposal. So essentially, in addition to the written application, the way the appellant has behaved throughout the appeal hearing has further compounded the need for the applicant to waste costs and time in making sense of the various schemes and then responding to them.
4. Picking up on the first point in reply, essentially, whilst there was time spent on clarifications, those were entirely necessary given, as I have already discussed, the number of plans and the inconsistencies between them, which the applicant did have to spend extra time in working out.

5. In terms of the points about the description of development, just as a point of clarity, you will have your own notes, I am sure, but the applicant's recollection is that it was not withdrawn; rather, there was an acceptance Green Lane was mentioned, but the applicant maintains that the type and breadth of works were not covered by the description of development (revised scheme).
6. Then just a number of other points of clarity as well. The applicant is looking at the first point raised in the written response; it is simply not the case that the applicant thinks that no further work could be done. It is, as they made clear, the amount of further work that would require a new application.
7. In terms of point 2.2 of the written reply, we are not suggesting that awards can be made for the time spent on the application process, and I have set out the nuance in the application at paragraph 4, but to clarify the relevance of what has happened post 17 July 2024, it is that the applicant ultimately had the discretion to accept any further information. They did not and had made their position clear as to why, and therefore when it came to the appeal and the revised scheme and the previous revised plans that were also in play, the applicant had to spend time analysing those for the appeal.
8. In terms of what the applicant has and has not withdrawn in terms of paragraph 2.10 of the written reply, it is again not something that we did in fact withdraw. Just to underline the point, the Planning Practice Guidance ("PPG") places the discretion of accepting further evidence after the validation of a planning application entirely with the applicant. Whilst the appellant maintains at paragraph 2.16 of its written reply that those were minor tweaks because the applicant had not accepted the revised plans. If this is meant to refer to the tweaks between revisions A and B as compared to revisions D and D.a, then it is not an appropriate comparison given what had been accepted.

The response by Mulgrave Developments Ltd ("the appellant")

9. The response was made in writing at the hearing, and the following additional points were made orally.
10. The first point I'd like to respond to is the time spent on the first morning of the hearing. We would like to highlight that a significant portion of that time was spent dealing with the applicant's misunderstanding of the proposed works near South Lodge Farm. There was also material time spent addressing the applicant's argument that the appeal site fell outside of the description of development, only for the applicant to withdraw from both of these positions on questioning. There was also a suggestion that the works to move Green Lane to the north also led to wasted time. It was established that the movement of Green Lane northwards was limited to around 16 cm and that these works had been shown in that fashion for a number of months, so there was no prejudice to the applicant.

Reasons

11. Parties in planning appeals normally meet their own expenses. However, 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 process.
12. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs

should be awarded. I have been mindful of actions during the planning application in considering this application.

13. The applicant seeks an award of costs on procedural matters in respect of the plans and supporting information and the abnormal costs insofar as the viability case. There are several strands to this that broadly relate to three examples of unreasonable behaviour as set out in the PPG. They are introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen; delay in providing information or other failure to adhere to deadlines; and only supplying relevant information at appeal when it was requested, but not provided, at application stage.

Plans and supporting information

14. My decision sets out the chronology in which the plans and supporting information were submitted or presented by the appellant. I do not repeat this for the sake of brevity, but I shall adopt the same abbreviations for ease. I have also outlined which plans the appellant wished the appeal to be determined upon, my views on them, and the plans on which I determined the appeal. Again, that is not repeated here and I shall instead focus on whether the appellant's actions amount to unreasonable behaviour and whether those actions caused the applicant to incur unnecessary or wasted expense in the appeal process.
15. The starting point is the applicant's email of 17 July 2024, which set out that it had a *"number of concerns that we do not consider can be rectified by minor amendments. The required alterations to achieve an acceptable scheme would take it outside of the scope of the current application, as such we will not be accepting any amendments to the current application."* The intended reasons for refusal were then set out. These related to a purported unsafe access, harm to visual amenity and the character of the area, overdevelopment, and insufficient information in respect of highway matters, protected species, biodiversity net gain, and viability. The email then set out the applicant's view that *"it is not considered that an acceptable scheme can be achieved within the perimeters of the current application. We request that the application is withdrawn....in the meantime we will progress the application to determination."*
16. The appellant is correct to say that the applicant's concerns relate to the detail of a scheme rather than the principle of development taking place on the land. It is also possible for changes to an application to be suggested or requested before the local planning authority has determined the application. Prior to and after the email of 17 July 2024, the appellant was seeking to engage with the applicant to address its concerns. Multiple requests for meetings were made by the appellant, but they were not taken up. Why that was the case, save for the response on 17 July 2024, is a matter for the applicant, but local planning authorities should approach decisions on proposed development in a positive and creative way.
17. There is, however, a duty placed on local planning authorities to make timely decisions. That is essential for a properly functioning planning system. With this in mind, the PPG explains that it is at the local planning authority's discretion whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. Noting this, for the reasons outlined, I disagreed with the applicant's contention that the type and breadth of works detailed in the Revised Scheme to Green Lane would fall outside of the

description of development. That said, the amount of further work involved in potentially supporting an acceptable scheme was varied and significant compared to the Original Scheme. They also cover a range of issues that have knock-on effects to one another. The applicant was entitled to consider that they jointly materially altered the proposal despite the appellant's view that they were minor changes. They explained why they did. The number of revisions made and the breadth of additional supporting information that is now relied upon support this.

18. Nevertheless, even if the applicant was not willing to accept further information, a meeting to discuss the issues may have been beneficial for both parties with the view to the submission of a new application if the appellant had followed the applicant's advice. I express this view in the context of the appellant's numerous requests and the Framework's advice around engagement and working positively. Further, despite the applicant's clear position, the material submitted in August 2024 by the appellant was placed online. This would indicate to any reasonable observer that the material was being considered even if a different approach was in fact being taken. It is the applicant's responsibility i.e. the Council to ensure documentation aligns with what is being considered even if different officers are doing different things.
19. The material submitted by the appellant in August and September 2024 was provided with a view to finding a solution, having engaged with consultees. This was done in good faith, and the timing of the material submitted in September and the applicant's communication of the decision appears to be coincidental. But the appellant has not taken up the applicant's advice, and hence the subsequent work was done at the appellant's own risk despite the intentions behind that work. Given the applicant's clear stance, there cannot also be an expectation that new material will be accepted as part of the appeal process, especially as that process should not be used to evolve a scheme. However, the material submitted in August and September was not initially submitted during the appeal, as that was only lodged on 4 March 2025, so in that regard it provides important context, but it has, in considering whether to accept amended information as part of the appeal, been necessary for the applicant to consider and address this.
20. The appellant presented four versions of the proposed development in the appeal: the Original Scheme, revision a, revision b, and the Revised Scheme in its appeal. It was not until shortly before the hearing that the appellant confirmed, on my direction, which plans and information they wished the appeal to be determined on.
21. Although the applicant clearly set out its position in terms of the acceptability of any material submitted after 17 July 2024, it did address the merits of each revision and the supporting information if I based my appeal determination upon them. It also outlined its position on that, having regard to procedural and substantive matters. That was a reasonable approach to take, and it required the input of various professionals to analyse that information and prepare the applicant's Statement of Case and then oral submissions at the hearing.
22. Given that I determined that none of the plans after those that formed the Original Scheme should be considered as part of the appeal, and the applicant's clear directions during the planning application, it follows that the appellant's actions and behaviour in evolving and amending the appeal scheme is unreasonable behaviour, as it caused the applicant to carry out extra preparatory work at extra cost. This would not have happened if the appellant had resubmitted a fresh

- planning application or alternatively pursued their appeal based on the Original Scheme. Moreover, the applicant has needed to consider and respond to new or updated supporting information. This has also required additional preparatory work and expense that need not have arisen regardless of whether the merits of any of this information have addressed the applicant's concerns.
23. It is also important to bear in mind that parts of both the Amended Layout and the Further Amended Layout contained parts of the proposed development that fell outside of the site edged red. As a result, this raised the question of whether those versions of the scheme accorded with Articles 7(c)(i) and 13(1) of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended). It was only at the hearing that the appellant accepted that those plans should in effect be put to one side. The appellant said that they were "minor immaterial alterations to account for errors" that were highlighted in the applicant's Statement of Case, but I am unclear why this issue was not realised earlier, and it took the applicant to carry out unnecessary work comparing the various plans and raising this matter. That is unreasonable behaviour that has caused the applicant unnecessary and wasted expense in the appeal process.
24. Further submissions were made by the appellant in the form of rebuttals (highway and arboricultural) and amended plans on 19 June 2025 with a view to addressing the applicant's concerns. The appellant explained at the hearing how it wished that material to be considered, with much of it to support the proposition that an acceptable scheme could be delivered addressing highway and arboriculture concerns using a Grampian condition. Rebuttal evidence can at times be helpful, but there is no provision to allow it. It was, however, given the technical detail contained therein, submitted relatively shortly before the hearing. This required the applicant to review the material and prepare its responses ready for the hearing. However, on balance, there was sufficient time for the applicant to review the matters contained within the material submitted, and the parties were evidently able to provide substantive responses on the various matters at the hearing.
25. Also, on 19 June 2025, the appellant submitted several plans that overlaid the site edged red on each version of the proposed development's layout. I asked for this to assist with discussions at the hearing. Therefore, any work that the applicant carried on these was not caused by the appellant, as they were simply responding to my request to bring clarity to the situation. The appellant's actions relating to these plans were not unreasonable.

Abnormal costs

26. The fourth reason for refusing planning permission highlighted a number of concerns with the viability assessment submitted with the application. One of these included the lack of information concerning abnormal costs. The applicant set out in its Officer Report that further details would be required to demonstrate how the abnormal figure had been arrived at.
27. The Financial Viability Assessment submitted with the planning application did set out abnormal costs for several categories and explained that a detailed breakdown could be provided on request. It is not clear whether that information was requested or not. While the highway works to Green Lane do influence the scheme's abnormal costs, and it was unclear whether any of the various revisions would have been acceptable in highway terms, the appellant could still have provided the information that related to each revision, whether that be during the planning

application or when the appeal was lodged. This is especially the case for the Revised Scheme, for which the appellant was positively seeking planning permission. In this respect the provision of more detailed information should have been clear to the appellant given the applicant's stance that detailed abnormal information would be required. The opportunity to provide that information in the RVA lodged with the appeal was not taken up. Whether it is the appellant's viability consultant's standard approach or not is not the point.

28. On 16 May 2025, I asked both parties to constructively engage on various matters, including viability, so that the hearing was focused and only covered disputed matters. The Statement of Common Ground ("SoCG") to be submitted on 10 June 2025 was to address whether the scheme could viably make an affordable housing contribution along with contributions for health care and sports facilities/play area. As part of this process, I asked both parties to engage on the various inputs.
29. In response to the applicant's review of the RVA sent to the appellant on 22 May 2025, the appellant's consultant contacted the applicant's viability consultant on 2 June 2025 to ask them how long it would take to review abnormal cost information if it was submitted. The answer provided was "that day" to assess the information in time for the hearing. The abnormal cost information was sent to the applicant on 4 June 2025. This did, despite timing concerns, enable the applicant to review that information and to seek the views of a cost's consultant. Further, it enabled the parties to submit the Viability Statement of Common Ground in accordance with an extended deadline on 20 June 2025.
30. While the applicant has ultimately been able to provide its view on the scheme's viability, it has, nevertheless, needed to respond to information that has only been submitted after the appeal had started and the submission of the RVA, despite the concerns set out in the Officer Report and the fourth reason for refusal. The detailed breakdown of abnormal costs was also only shared nearly three weeks after I had asked both parties to constructively engage on a range of issues, including viability inputs. That information was only provided after the applicant had reviewed the RVA, and hence, the applicant has needed to review the viability evidence twice, not once, within the appeal process. The reason for that is due to the appellant's delay in sharing a detailed breakdown of how the headline abnormal costs in the RVA had been calculated. It was within the appellant's gift to share that evidence far earlier, whether that be as part of the planning application or the appeal. That behaviour is unreasonable, and it has put the applicant to extra work and to incurred unnecessary and wasted expense in the appeal process.
31. For the reasons given above, a full award of costs is not appropriate, as the appeal still considered the Original Scheme which the applicant refused planning permission, and that was considered and determined as part of the appeal. Hence, the appeal was not avoidable altogether given the parties dispute. However, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in two respects. The first is the applicant's consideration of the revised plans and evidence submitted as part of the appeal, save for the rebuttal evidence and the overlay plans. The second aspect is the applicant's additional review of the appellant's viability assessment caused by the delay in providing a detailed breakdown of the abnormal costs. On this basis a partial award of costs is justified.

Costs Order

32. 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 Mulgrave Developments Ltd shall pay to North Yorkshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the applicant's consideration of the revised plans and evidence submitted as part of the appeal and the applicant's additional review of the appellant's viability assessment in the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

Andrew McGlone

INSPECTOR