



Costs Decision

Hearing held on 5 August 2025

Site visits made on 4 and 5 August 2025

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Costs application in relation to Appeal Ref: APP/K3415/W/25/3359731

Land off Horner Avenue, Fradley, Lichfield, Staffordshire, WS13 8TR

- 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 Daniel Wright (Vistry Homes Ltd and Greenlight Developments Ltd) for a full award of costs against Lichfield District Council.
 - The appeal was against the refusal of planning permission for a residential development with associated works and public open space, and access from Horner Avenue and Ward Close.
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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 application for an award of costs is made on substantive grounds. It is highlighted that the Committee of the Council determining the application decided not to accept the recommendations of its Officers to grant permission. It is argued that the Council has prevented or delayed development which should have been permitted having regard to the development plan, national policy and other material considerations, has failed to substantiate the reasons for refusal on appeal and has relied on vague, generalised or inaccurate assertions about a proposal's impacts which are unsupported by objective evidence. It is also claimed that the Council has persisted in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable and have not determined similar cases in a consistent manner. The PPG indicates that, in all such circumstances, costs may be awarded against a Council.
4. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the Council to be able to produce relevant evidence on appeal to support the decision.
5. The application had two reasons for refusal. Both of the reasons for refusal set out the development plan policies and other documents to which it was considered the proposal was contrary.

6. The first reason for refusal related to the principle of the development and whether this complied with the development plan. Whilst this was withdrawn by the Council early in the appeal process, due to a change in the Council's 5 year housing land supply position, nonetheless the appellant had to address this in their appeal submission.
7. The appeal site was the subject of a previous similar application for a slightly larger number of dwellings which was subject of an appeal¹ in 2023. Within the Statement of Common Ground for this previous appeal it was agreed that the development of the site was in accordance with Policy EMP1 of the *Lichfield Local Plan Allocations (adopted July 2019)*, and that, in principle, the development of the site for housing was supported by the development plan, notwithstanding the fact that the site was outside the settlement boundary established in the *Fradley Neighbourhood Plan (made February 2019)*. This was a conclusion which the previous Inspector agreed with.
8. Since that appeal there have been no changes in the development plan. So, irrespective of the housing land supply position, on this basis it is unreasonable for the Council not to determine similar proposals in a consistent manner.
9. The second reason for refusal related to whether Horner Avenue was suitable for the quantum of development proposed and whether its use would unacceptably harm the living conditions of residents both during the construction phase and afterwards.
10. The suitability of Horner Avenue was something that was addressed in the previous appeal. Whilst that appeal was dismissed, the Inspector concluded that even if Horner Avenue is a 'minor access way' as set out in the Staffordshire Residential Design Guide, there was nothing in the guidance to preclude its use for larger developments and that the capacity of the local estate roads had not been raised as a concern. The Inspector's concerns in dismissing the appeal related solely to safety issues related to the drive at No 52 and the lack of a detailed Construction Management Plan (CMP).
11. Following discussions with the appellant, amendments to the scheme and the production of a detailed CMP, the Highways Authority raised no objection to the use of Horner Avenue as the access to the site for this appeal scheme during either the construction phase or when occupied. Moreover, it was confirmed at the hearing that nothing had changed in the nature or characteristics of the road since the previous appeal.
12. In the light of this, and the fact that the current appeal scheme is for a slightly smaller number of houses (109), it is unreasonable for the Council to have persisted in objections to an element of the scheme which an Inspector has previously indicated to be acceptable, particularly when the Highways Authority have also accepted that the access is acceptable.
13. Moreover, at the hearing the Council provided no substantive evidence to support the assertions in their hearing statement that the use of Horner Avenue for both construction traffic and the development would be unsafe or that it would have a severe impact. Whilst it was stated at the hearing that it was due to the characteristics of the road, no such characteristics were identified.

¹ Appeal Reference APP/ K3415/W/22/3294728

14. The potential for traffic associated with the development to cause unacceptable noise and disturbance for existing residents did not form any part of the reasons for refusal on the previous application on the site. So, it is inconsistent not to consider similar proposals in a consistent manner, particularly when this proposal is for slightly fewer houses.
15. The application was accompanied by a Transport Assessment that provided the traffic flows the proposal would be likely to generate. In the light of this Environmental Health Officers had raised no concerns that this level of traffic would cause unacceptable living conditions for existing residents.
16. The Council provided no evidence either in their written statement or at the hearing to substantiate the claim that noise and disturbance from the development would be such that it would create unacceptable living conditions. Nor did they provide any evidence, to counter that from the appellant, that the scheme would not have an unacceptable impact in this regard.
17. Noise is a technical and complex issue which requires technical assessments to show that living conditions would be significantly affected. This has not been provided by the Council who simply relied on vague and generalised assertions that were not supported by any objective evidence. Nor did they provide any other evidence to show that in any other way the living conditions of existing residents would be unacceptably harmed by the proposed development.
18. Overall, I consider that the Council has not produced relevant evidence at appeal stage to support their decision to refuse planning permission but has relied on vague and generalised assertions that are not supported by any objective or substantive evidence. It has also persisted in objections to elements of a scheme which an Inspector has previously found acceptable and has been inconsistent in its decision making. I therefore consider that the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal.
19. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is justified.

Costs Order

20. 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 Lichfield District Council shall pay to Mr Daniel Wright (Vistry Homes Ltd and Greenlight Developments Ltd), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Lichfield District 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.

Alison Partington

INSPECTOR