
Costs Decision

Hearing held on 3 June 2025

Site visits made on 3 and 4 June 2025

by **O S Woodward MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 September 2025

Costs application in relation to Appeal Ref: APP/B2002/W/25/3360989 Land off Louth Road, New Waltham, North East Lincolnshire DN36 4RY

- 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 Cyden Homes Ltd for a full award of costs against North East Lincolnshire Council.
 - The appeal was against the refusal of planning permission to erect 249 dwellings with associated garages, open space, landscaping, drainage, emergency access and associated infrastructure with new access from Louth Road.
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Decision

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

The submissions for Cyden Homes

2. The costs application was submitted in writing on 19 February 2025. The following additional points were made orally. Confirmation that a full award of costs is pursued. There are two reasons for refusal both for technical reasons and made against the recommendation of the Head of Planning with no evidence provided to support the technical reasons. Our evidence was substantial at application and appeal stage. The only evidence provided by the Council is local opinion and evidence, neither of which have been good enough to substantiate the technical considerations. The Council has also relied on the appellant's own body of evidence on technical grounds. This unreasonable behaviour has resulted in wasted expense.

The response by North East Lincolnshire Council

3. The response was made in writing on 2 April 2025. The following additional points were made orally. The planning committee is entitled to come to a different decision to the recommendation of the officer's – it is a democratic process. The reason for refusal was a matter of judgment. It does not require substantive evidence, rather a view and a decision that is reasonable. The reason for refusal is very specific. Having regard to the appellant's own evidence is a sensible consideration, and it is our interpretation of what it shows that we have taken to the Hearing. The decision on the appeal does not necessarily relate to costs, which relate to unreasonable behaviour rather than decision making.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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.

Unreasonable behaviour

Highway safety

5. The proposal would result in the worsening of traffic congestion on the A16. The northern arm of the Toll Bar roundabout is already at capacity. The development traffic would tip the capacity of that arm of the roundabout from 99.9% to over 100%, at 107.2%. This also involves considerations regarding school children, who are particularly vulnerable road and footway users, using the Toucan crossing that is partly responsible for the capacity at that arm of the roundabout. The alternative route considerations regarding Scartho Road includes a roundabout at the A16 and Low Farm where one arm would be above the target threshold capacity of 85%.
6. The Council is entitled to use the data and evidence provided by the appellant but to draw different conclusions. This is particularly the case where there are acknowledged capacity issues which the proposed development would worsen. As can be seen from my Decision, I have found that the proposed development would have an acceptable effect on highway safety and the efficient operation of the highway network. However, it was a reasonable position of the Council to take to challenge this position. Its case was clear, concise, and did not stray further than reasonable arguments based on the evidence at the hearing and the 'on the ground' operation of the road network. I do not, therefore, view its behaviour as being unreasonable in this respect.

Air quality

7. The appellant's Air Quality Assessment 2024 (the AQA) was the only technical document in front of the hearing. No alternative empirical evidence was provided by the Council. Nor did it seek to challenge the results of the AQA. The AQA finds that air quality in the surrounding area and on the appeal site is comfortably within the targets set out at Schedule 2 of The Air Quality Standards Regulations 2010. It also confirms that the proposal would have a negligible effect on air quality, including on children and teachers at the school.
8. Given the significant headroom to the air quality standards levels and the agreed negligible effect of the proposal, the scenarios advanced by the Council, such as use of the Toucan crossing coinciding with some of the greatest increases in traffic, would not plausibly result in unacceptable levels of air pollution. Future targets are set out in The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023. However, the proposal would have a negligible effect on the PM2.5 pollution levels that would only marginally breach these regulations. The Government has not yet set out how proposals are meant to respond to the new regulations. The Council did not, therefore, sufficiently substantiate its concerns with regard to air quality. This constituted unreasonable behaviour.

Wasted expense

9. The effect of the proposal on air quality was part of the reason for refusal. This was actively defended by the Council throughout the appeal process. The unreasonable behaviour of the Council in this respect therefore resulted in wasted expense by the

appellant in seeking to defend this element of the reason for refusal throughout the appeal and hearing process.

Costs Order

10. 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 North East Lincolnshire Council shall pay to Cyden Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurrent in dealing with air quality; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to North East Lincolnshire 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.

O S Woodward
INSPECTOR