



Costs Decision

Hearing held on 7 October 2025

Site visit made on 7 October 2025

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025

Costs application in relation to Appeal Ref: APP/V2255/W/25/3368880

Brogdale Farm, Brogdale Road, Ospringe ME13 8XU

- 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 The East Malling Trust for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for development described as a mixed-use development comprising up to 360sqm nursery school (use Class Ef), up to five holiday lets and up to 1,710sqm of flexible workshop, industrial & research and development floorspace (use Class Eg (ii, iii) with access from Brogdale Road.
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Decision

1. The application for an award of costs is refused.

Background

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 Applicant states that the Council took several years to decide the application and once it had, it did not provide evidence to substantiate its reasons for refusal. The Applicant also considers the Council behaved unreasonably by accepting late evidence without consultation. Consequently, the Applicant did not have appropriate time to formally review and respond to the late evidence and the Applicant feels that these actions have generated a need for this appeal, resulting in unnecessary delay and expense.

Reasons

4. A Planning Committee decision which goes against officer advice is not a reason to give an award of costs, as the Committee was entitled to come to its own conclusions on the merits of the proposal. The reasons for the refusal are set out in the Council's decision notice, and they are complete, specific, and relevant to the application. The decision notice also clearly states the policies in the development plan. In addition, the Council's statement of case and its oral evidence given at the Hearing was coherent and logically presented. The Council's evidence reasonably showed me how it arrived at its balanced decision.

5. However, the Council accepted highway evidence late in the process. While the acceptance of late evidence can be reasonable in certain circumstances, and there is no evidence to suggest the Council has a statutory requirement to further consult, the PPG¹ states that where an application has been amended it is up to the Local Planning Authority to decide whether further consultation would be necessary in the interests of fairness.
6. The PPG also states that in deciding what further steps may be required local planning authorities should consider whether, without consultation, any of those who were entitled to be consulted on the application would be deprived of the opportunity to make any representations.
7. The late evidence was submitted on the day the Council decided the planning application and this evidence proved pivotal in influencing the Council's assessment of the proposal in respect of the highway matters. Despite the considerable weight the Council gave to this late evidence, and the ramifications it had for the outcome of the application, the Council did not consult the Applicant and moved to a decision on the same day. In doing this, the Council deprived the Applicant of an opportunity to make representations particularly as this late evidence was relied upon in framing the highway objection.
8. In the interests of natural justice, the planning process must be open and fair. If new and previously unseen information is submitted and later relied upon, consultation with affected parties would very likely be required before any formal decision is made. This ensures those who would be affected by a decision can express their views and decisions are taken in a transparent way. To do otherwise would undermine confidence in the planning system.
9. Therefore, given the late evidence was pivotal to the final highway reason for refusal, the Council's failure to consult with the Applicant in this respect was unreasonable.
10. The merits of the planning arguments were articulated in evidence, and my reasoning is set out in the associated Appeal Decision; I do not intend to rehearse the planning issues here. However, the late evidence was a legitimate material consideration with merit. The Council is required to give regard to it and the weight to give to these considerations is for the decision maker to decide. This was satisfactorily articulated in the Council's written evidence and orally at the Hearing.
11. Taking all the evidence into account, I have not been persuaded that the costs incurred by the Applicant in preparing for and attending the Appeal Hearing would have been avoided, even if late consultation had occurred at the application stage. This is because the Council's case did not materially change at appeal. While my appeal decision found in favour of the Applicant, this was a matter of planning balance and judgement; the Council was entitled to come to a different view as set out in its evidence.
12. Tying all these factors together, I have found that unreasonable behaviour on behalf of the Council has occurred by accepting late evidence and relying on this evidence to inform the third reason for refusal without affording the Applicant opportunity to comment.

¹ Paragraph: 026 Reference ID: 15-026-20190722

13. However, having considered the submissions from both main parties, I am not persuaded that undertaking consultation at the application stage would have changed the Council's position at appeal or prevented the inclusion of the third reason for refusal. Consequently, it has not been shown that unnecessary or wasted expense has occurred in the appeal process.
14. Finally, I note the application was live for several years with changes in council personnel over this period. That said, and from the submissions before me, the Council was reactive to the applicant's requests for updates and revisions were negotiated during the lifecycle of the application in response to Council comments. If the Applicant had concerns about the time taken to decide the application, the option was available to appeal against non-determination. This did not occur, and it was not the delay in the decision that compelled the Applicant to appeal.

Conclusions

15. As a result, having considered the above, I conclude that unreasonable behaviour by the Council has been demonstrated, however, this has not led to unnecessary or wasted expense incurred by the Applicant. Consequently, the application for an award of costs is refused.

N Praine

INSPECTOR