



Costs Decision

Site visit made on 29 January 2026

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2026

Costs application in relation to Appeal Ref: APP/G2625/W/25/3374482

Land to the East of Holt Road, Norwich, Norfolk NR6 6FD

- 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 David Utting of Donald Utting & Son Limited for a full award of costs against Norwich City Council.
 - The appeal was against the refusal of planning permission for change of use of agricultural land to Class E for the servicing and maintenance of smartshops, improved vehicular access and associated works.
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Decision

1. The application for an award of costs is partially 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 is made on substantive grounds in that the Council behaved unreasonably in preventing or delaying development which should clearly be permitted and by refusing planning permission on a planning ground capable of being dealt with by condition.
4. The Council refused planning permission on 11 April 2025, with the planning application having been valid since 10 April 2024. The reasons for refusal related to the effect of the proposal on the free and safe flow of traffic arising from the increased use of the access and the introduction of abnormal loads. This was due to the access being located on a corridor of movement subject to the national speed limit. Those reasons for refusal were subsequently withdrawn in light of progress related to a highway improvement scheme.
5. The applicant has provided me with a copy of a consultation exercise carried out by the local highway authority commencing 22 November 2024 which referred to a previous consultation exercise carried out in August 2024. It also set out the budget, sources of funding for the project and included indicative drawings. I was also provided with a copy of consultation regarding the proposed traffic regulation order to lower the speed limit in the area which closed on 8 April 2025.
6. Even discounting the internal emails provided by the applicant, it was clear from the public evidence that a scheme was progressing for the delivery of the pedalway and had been in preparation for some time. The oldest drawings submitted for the

- scheme are dated 2023. There was evidence of funding from the consultation and of an intention to deliver an early stage of the scheme. Consultation was being undertaken on a traffic regulation order at the time the application was refused. I find the characterisation of the scheme as being at initial concept stage as being somewhat misleading, given the steps I have outlined.
7. It is not uncommon for planning permission to be sought prior to other infrastructure works taking place. The PPG on the use of conditions confirms that negatively worded conditions can be used in relation to land not in the control of the appellant. This approach typically prohibits development until a specified action has been taken. It cautions that such conditions should not be used when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
 8. In this case, there was clear evidence of the intention to deliver the project. Multiple stages of consultation had been undertaken, including with respect to the traffic regulation order. The drawings before me indicate the amendments to the scheme at the August and November consultations included siting the works involving the most vulnerable road users – the future users of the pedalway – on the opposite side of the A140. The intention was for the nature of the highway to change away from being a corridor of movement. As it is the change in the nature of the highway that is highlighted as the reason for the position of the highway authority changing, the submission of the additional information in the form of the road safety audits would not represent significant new information addressing the reasons for refusal.
 9. While I appreciate there may be some reticence to use negatively worded conditions, in this case, there was sufficient evidence that it would be reasonable to assume that the scheme of highway works would be delivered within the standard three years for a planning permission to be implemented. In this circumstance, and with the Council highlighting no other concerns with the proposal, I consider this is a matter which could reasonably have been addressed through the use of a negatively worded condition, such as that recommended by the local highway authority in its updated comments.
 10. I acknowledge the Council was responding to the advice of a statutory consultee. However, it is the decision of the Council to refuse planning permission, having had regard to all material considerations. They are not bound by the advice of statutory consultees. I therefore find that the Council has behaved unreasonably as this is a matter which could have been addressed by condition. Consequently, the appellant was put to unnecessary expense with respect to the appeal.
 11. Notwithstanding, the appeal has been dismissed for another reason and it would not be reasonable for the Council to have to pay the costs incurred by the appellant with respect to protected species. This is reflected in the costs order below.

Costs Order

12. 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 Norwich City Council shall pay to David Utting of Donald Utting & Son Limited, the costs of the appeal proceedings described in the heading of this decision excluding those costs incurred in relation to protected species; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Norwich City 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.

Jennifer Wallace

INSPECTOR