Planning Inspectorate

Costs Decisions

Inquiry held on 4 - 6 March and 10 March 2025

Site visit made on 6 March 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Land south of Dragons Lane, Moston, Cheshire CW11 3QB (Pitch 6)
Costs application in relation to Appeal A Ref: APP/R0660/C/24/3354264

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Crimea Price for a full award of costs against Cheshire East Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the change of use of the land from agricultural land to a residential caravan site together with hardstanding, erection of fences and gates, siting of caravans and construction of a utility building and a detached building.

Land south of Dragons Lane, Moston, Cheshire CW11 3QB (Pitch 8)
Costs application in relation to Appeal B Ref: APP/R0660/C/24/3354267

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr John Collins for a full award of costs against Cheshire East Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the land from agricultural land to a residential caravan site together with the creation of hardstanding, erection of fences and gates, stationing of caravans and construction of a stables building and a detached building.

Land south of Dragons Lane, Moston, Cheshire CW11 3QB (Pitch 11)
Costs application in relation to Appeal C Ref: APP/R0660/C/24/3354270

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Tom Price for a full award of costs against Cheshire East Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the change of use of the land from agricultural land to a residential caravan site together with hardstanding, erection of fences and gates, siting of caravans and construction of a utility building and a detached building.

Land south of Dragons Lane, Moston, Cheshire CW11 3QB (Pitch 12)
Costs application in relation to Appeal D Ref: APP/R0660/C/24/3354258

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Darren McGinley for a full award of costs against Cheshire East Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the change of use of the land from agricultural land to a residential caravan site together with the creation of hardstanding, erection of fences and gates, siting of caravans and construction of a utility building and a detached building and the erection of children's play equipment and other domestic paraphernalia.

Pitch 12, Land at Dragons Lane, Sandbach CW11 3QB
Costs application in relation to Appeal E Ref: APP/R0660/W/24/3354285

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Eileen Doran for a full award of costs against Cheshire East Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the material change of use of land from an agricultural use to a use as a residential caravan site with one pitch of no more than two caravans (one static and one touring), together with the creation of hardstanding, erection of fences and gates, siting of caravans, and a container, and the erection of a day room and a bin store.

Decisions

1. The applications for an award of costs are allowed in the terms set out below.

The submissions for the applicants and Cheshire East Council

2. The costs applications were submitted in writing, and a written response was made in reply after the Inquiry closed to the Council's response to the applications.

Reasons

3. 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.

4. The PPG states that "an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense." (Paragraph: 032 Reference ID: 16-032-20140306)

5. The applicants claim seeks a full award in the first instance, and in the alternative, a partial award in respect of the matters raised which relate to procedural and substantive issues that the applicants say have led them to incur unnecessary costs in the appeal process.

6. An appeal on ground (a) was initially made in respect of Appeal D, but where an enforcement notice ("EN") has been issued after 25 April 2024, ground (a) is barred if the requirements of s174(2A) and (2AA) of the Act are met. Namely, the EN was issued during the time when the planning application now subject of Appeal E had been submitted for consideration and was yet to be determined. Appeal D has therefore proceeded on ground (g) only. As a result, I have approached this decision on the basis that there are issues raised in respect of the EN subject of Appeal D, but as they were matters that were explored under the planning merits considered through Appeal E, which is for the same pitch, I have referenced my findings as Appeal E to avoid doubling up of the same issues.

Procedural

7. There are two aspects to the applicant's procedural claim that relate to the National Gas Transmission ("NGT") issue and whether there was an effective investigation before the ENs were issued. It is necessary to deal with the points together and to look at how the NGT issue evolved. The applicants point to four examples of behaviour from the PPG that may give rise to a procedural award against a local planning authority (LPA). These are lack of co-operation with the other party or parties; delay in providing information or other failure to adhere to deadlines; only supplying relevant information at appeal when it was previously requested but not provided at application stage; not agreeing to a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties; and introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen.

8. The PPG states that in respect of enforcement action, LPAs must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate (Paragraph 048 Reference ID: 16-048-20140306).

9. The Council explained at the Inquiry and in its Rebuttal that it carried out an investigation prior to each EN being issued. The Council say that all relevant parties provided input into that investigation. I understand that this included input from NGT and the Health and Safety Executive ("HSE"). There is, however, no substantive evidence of the investigation to corroborate the Council's word in terms of a chronology of events, dates of site visits, notes, or details of Land Registry searches. That is surprising given the variety of issues for each pitch, the appellant's allegations, and the Council stating that welfare questionnaires were left with the applicants to complete and return before the ENs were issued. That said, on the balance of probabilities, I consider that an investigation took place, especially as none of the applicants contested the Council's point about welfare questionnaires being left with them to complete.

10. As part of the reasons for issuing each EN, the Council states that the "unauthorised development sits atop National Grid's High-Pressure Gas Pipeline"…and "NGT consider that the unauthorised development does not allow access to the pipelines for maintenance."

11. Dealing with the 'atop' point first. Each EN identified the land to which the EN related. The Council also knew of the broad location of the gas pipelines based on the previous appeals on the wider site. If there was any doubt, it could have asked NGT like the appellant did and receive a plan showing the location of each pipeline. In the lead-up to the Inquiry, the applicants produced a composite plan that sought to illustrate the location of each pitch, the location of the gas pipelines and the extent of their easements. The outcome of this showed that pitch 6 (Appeal A) did sit atop a pipeline, but none of the other pitches did. Hence, referring to three of the four pitches being 'atop' the pipelines was factually incorrect.

12. Whether or not the applicants themselves knew whether their land sat atop the pipeline is irrelevant. It is for the Council to carry out adequate prior investigation, and the issue raised is that the Council did not do so.

13. While the consequences for the occupiers would likely be the same whether or not their pitches sit atop the pipelines, that is not the point. As I see it, there are two possible explanations. The first is that the reasons for each EN have just been universally applied without due diligence to the specific circumstances of each pitch. Or the second is that the Council has not properly checked what the situation was and obtained the location of the pipelines from NGT if it did not already have the information to hand before the ENs were issued. Regardless, I arrive at the same point: that the Council has incorrectly included reasoning that ought not to have been present on three of the four ENs, and that situation could have been avoided had a more diligent investigation taken place. Given that the Council has not provided evidence of its investigation, there is no other explanation. This amounts to unreasonable behaviour.

14. However, the unnecessary or wasted expense incurred by the applicants is time limited as their representative received a plan in a letter from NGT ("the NGT letter") showing the location of the gas pipelines on 20 September 2024. There was no subsequent evidence that indicated the location of the gas pipelines had changed. The plan from NGT would have enabled the applicants to compare this with the plans appended to each EN to determine whether the pitches sat atop the pipelines. The fact that an accurate comparison plan only materialised some time later does not change the applicant's ability to assess the situation for themselves,

especially given the appeal decision in 2023 for a neighbouring pitch on the wider site[1] ("the 2023 decision") that raised HSE issues, which the applicants' representative was aware of.

15. The applicants also say that the Council did not adequately investigate whether each development allowed access to the pipelines for maintenance before each EN was issued. The applicants tried to clarify with the Council what the NGT maintenance issue was, as unlike a planning application, there is no requirement to formally consult consultees as part of an enforcement investigation, which would have placed the information into the public domain.

16. The NGT letter did, however, identify NGT's legal rights around the gas pipelines and explained the importance of ensuring that proposed works did not infringe those rights, specifically referring to easements. The NGT letter also advised that in the event of any lack of clarity as to where those easements were, the correct course of action was to contact the landowners and obtain details of them. On reading the NGT letter, there was sufficient indication that easements existed and that the developments had the potential to infringe on those easements and how to identify where the easements were.

17. Added to this, the applicant's Grounds of Appeal submitted on 10 October 2024 referred to an easement in respect of the same gas pipelines for a nearby pitch on the wider site. The issue taken there was the same raised here by NGT on behalf of the Council. Hence, the issue of an easement was known to the applicants relatively early in the appeal timetable.

18. The Statement of Common Ground ("SoCG") in paragraph 9.1 confirmed that an area of disagreement related to whether the developments allow adequate and effective access to the pipelines for essential maintenance. However, in my CMC Summary Note I explained that "it would also be helpful to discuss and agree on any technical matters concerning the pipelines or anything else that would narrow your dispute." This resulted in plans showing the location of the gas pipelines and the HSE Zones but not the easements.

19. Although the Council submitted evidence in accordance with the appeal timetable, NGT's Proof of Evidence ("PoE") contained copies of the easements for each gas pipelines. While the issue was not new based on my reading of the reasons for issuing the ENs, it was a missed opportunity on the Council's part not to share these as part of the further work that I had asked the parties to do, even though the applicants could have taken steps themselves to ascertain the information. I understand that the Council elected not to agree to matters within the SoCG, and its planning witness accepted in cross-examination that the Council had waited until PoE were exchanged to introduce the issue of easements. The Council has not co-operated as fully as it could have done or ought to have done so, especially if the applicants had been asking about the issue.

20. This led to the applicants updating their composite plan, which ultimately showed that pitches 11 and 12 did not extend over NGT's easements. Thus, the reasoning for issuing the ENs relating to these pitches was factually incorrect. Had the Council bottomed out the issue prior to the ENs being issued, then those ENs would not have needed to refer to an NGT maintenance issue. The fact that the

[1] Appeal Decision Ref: APP/R0660/C/21/3286380

Council say they obtained input from NGT only adds to the mystery of why the issue found its way into the reasons why the ENs were issued. That is the Council's responsibility to bear, and the consequence of an inadequate investigation is that the applicants have needed to carry out work that they didn't need to if the Council had ensured the ENs were correct from the outset. Although the applicants could have taken steps themselves, they have done so in the context of the Council not co-operating as fully as it might and on the premise of a positive NGT which was put forward by the Council until the first day of the Inquiry. The Council has behaved unreasonably and caused unnecessary and wasted expense in doing so for Appeals C and E.

21. The evidence for pitches 6 and 8 shows that parts of those pitches extend over the NGT easements. Hence, the Council were correct with their reasons for issuing these ENs. However, NGT's objection to these proposals was withdrawn at the Inquiry on the basis that a suitably worded planning condition could be imposed to ensure that NGT could maintain the pipelines in accordance with the easements. That is an issue that should have been clear to the Council far earlier. It is difficult to say precisely when, but it stems back from the Council's actions on the SoCG, as there were knock-on effects for the preparation of PoE, Rebuttals and the Inquiry. Therefore, the applicants in these appeals have been put to unnecessary or wasted expense because of the Council's unreasonable behaviour by not co-operating with the other parties, not agreeing on factual matters common to witnesses of both principal parties, and by proceeding with a case where a planning condition would enable the development to go ahead.

22. I do, however, disagree with the applicants that the appeals could have been avoided because of both issues. There were multiple reasons for issuing the ENs, and even on the applicants' case, there was conflict with the development plan relating to the HSE issue and on character and appearance. The occupiers' personal circumstances were critical to the applicants' cases in carrying out the tilted balance and the s38(6) balance. Given that those were not before the Council when it issued the ENs despite providing welfare questionnaires to the applicants, those matters needed to be tested and, in fact, were added to orally at the Inquiry. Hence, I consider the Council would have likely still issued the ENs. As each applicant chose to give their evidence on oath, the only way by which the appeals could be heard is by an Inquiry. Therefore, any other points concerning the procedure are irrelevant.

Substantive

23. There are two parts to the substantive claim. The first relates to Appeal E and the third reason for refusal as set out on the Council's decision notice. The Council, in refusing planning permission, adopted the Environment Agency's position about the need for sufficient drainage information. However, in the appellant's Grounds of Appeal Statement they explained that the site is served by a sealed septic tank and that full details could be provided or conditions imposed if the appeal was allowed. That position was maintained in Mr Carr's PoE for this pitch.

24. LPA's are at risk of an award of costs if they behave unreasonably by unreasonably refusing planning permission…or by unreasonably defending appeals on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. This is the case here, as despite the Council's continued objection and the lack of sufficient or new

information, the Council accepted that a planning condition could secure further details and would overcome the objection. That position did not result from new information, and the Council could have accepted this position earlier and has therefore acted unreasonably in this respect and caused unnecessary wasted expense in doing so.

25. The second part concerns the Council's objections to Appeals A, B, C and E in respect of character and appearance and sustainability/accessibility to facilities and services. The applicants say that the Council has persisted in objections to elements of a scheme which Inspectors have previously indicated to be acceptable.

26. There have been several appeal decisions in recent years concerning land on the wider site to the south of Dragons Lane for similar development. These have considered character and appearance effects. The most recent of which was in 2023; a decision that was not challenged. I made the parties aware of that and asked them to focus on what had changed since the 2023 decision.

27. On character and appearance, the parties agreed that the proposals conflicted with the development plan, like the previous appeals, but the degree of harm was at issue. While each appeal was to be considered on its own merits, there was a cumulative effect to consider given that the Inquiry concerned four pitches, not just the one considered in the 2023 decision. That was a material difference, along with the physical location of each pitch. Even though I have reached the same outcome as I did in the 2023 decision, and the development plan has not changed in the meantime, the Council reasonably explained its position bearing in mind the quantum, scale, massing and type of development proposed. It was reasonable for the Council to consider all these factors and to have regard to the surrounding area, including the gas station that was also present when the 2023 decision was made. Hence, holding a different view where there is a material difference from previous Inspectors decisions, does not amount to unreasonable behaviour; it is just planning judgement. The Council was also reasonable in explaining that landscaping, which could be secured through a planning condition, would only assist so far. Therefore, the applicants were not put to unnecessary or wasted expense in the appeal process on this matter.

28. The sustainability/accessibility of the pitches was also a matter that had been explored in several previous appeal decisions, including the 2023 decision. The parties agreed that there had been no changes to the extent or location of facilities and services, the proximity of the sites to them, and the routes that occupiers would use to travel to them. Instead, the dispute focused on the total number of occupiers on the pitches that would collectively result in an increase in comings and goings from the site and with a greater number of car journeys to and from local facilities and services. The Council's stance was that this was a materially different situation compared to the 2023 decision owing to the number of pitches involved.

29. Each appeal was to be determined on its own merits, but there was a need to be cognisant of the number of pitches and their cumulative effect. So, while the Council's analysis of each pitch's accessibility on an individual basis would not stand up to scrutiny owing to previous appeal decisions, it was reasonable, notwithstanding my analysis and finding, for the Council to consider the cumulative accessibility effects of all the pitches. As the Council explained, there are far greater number of people living on all these pitches compared to the 2023 decision which concerned a single pitch and family comprising two adults and two children.

While the applicants disagreed with the Council's view, that does not necessarily mean the Council acted unreasonably. Crucially, the Council explained why it took the stance that it did. Thus, the Council acted reasonably on this issue, and the applicants were not put to unnecessary or wasted expense in the appeal process.

Conclusions

30. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the gas pipeline reference to being atop in Appeals B, C and E; the gas pipelines easement issue in Appeals A, B, C and E; and the drainage issue in Appeal E, and a partial award of costs is therefore warranted on these matters. An award of costs is not justified on the other aspects of the applicant's claim as the Council has not acted unreasonably on these issues.

Costs Orders

31. 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 Cheshire East Council shall pay to Mr Crimea Price, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the gas pipeline easement issue in Appeal A; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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 Cheshire East Council shall pay to Mr John Collins, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the gas pipelines reference to being atop of the pitch and the gas easement issue in Appeal B; such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. 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 Cheshire East Council shall pay to Mr Tom Price, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the gas pipelines reference to being atop of the pitch and the gas easement issue in Appeal C; such costs to be assessed in the Senior Courts Costs Office if not agreed.

34. 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 Cheshire East Council shall pay to Mrs Eileen Doran, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the gas pipelines reference to being atop of the pitch, the gas easement issue, and the drainage issue in Appeal E; such costs to be assessed in the Senior Courts Costs Office if not agreed.

35. The applicants are now invited to submit to Cheshire East Council, to whom a copy of these decisions have been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR