Planning Inspectorate

Costs Decision

Inquiry held on 20-22 May and 3-5 June 2025

Site visit made on 23 May 2025

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24th June 2025

Costs application in relation to Appeal Ref: APP/Y1138/W/24/3358001
Land at Tidcombe Hall, Tiverton

- 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 Tidcombe Holdings LLP for a full award of costs against Mid Devon District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for an outline application, with all matters reserved bar the main point of access and its associated works, for the conversion of Tidcombe Hall and outbuildings and the erection of dwellings to provide up to 100 dwellings in total, provision of community growing areas, public open space, associated infrastructure and ancillary works.

Decision

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

The submissions and responses by the parties

2. The costs application was made in writing on the final sitting day of the Inquiry. It was not possible to receive the Council's response on this day. Therefore, it was agreed that the Council's response and any final comments from the applicant could be provided in writing within a specified timeframe. The Council's response was received on 16 June 2025 and the applicant's final comments were submitted on 17 June 2025.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant contends that the Council has behaved unreasonably on substantive grounds on two alternative bases.

4. The first alternative relates to development plan compliance and the change in circumstances regarding housing land supply. The applicant argues that by April 2025 at the latest, the Council was aware that it could not demonstrate a five year supply and should have accepted that LP Policy TIV13 was triggered via Policy S4 as its recently published Housing Action Plan was insufficient to resolve the deficit. At that point, the applicant contends that the Council should have conceded its case and thus avoided the expense of the Inquiry process.

5. It was unrealistic for the Council to argue that one should wait and see if the Action Plan resolved the supply position, particularly when LP Policy S4 sets no timeframe and the Action Plan itself gives little comfort on resolving the deficit. However, even if the Council had accepted that LP Policy TIV13 was triggered, it was still necessary to first consider whether the criteria in that policy were met before permitting development. Criterion (d) simply refers to protecting the setting of heritage assets and neither it nor the supporting text specify an acceptable level of harm. Therefore, it was not unreasonable for the Council to find conflict with criterion (d). It will be seen from my decision that I identified conflict here too. On the applicant's first alternative, unreasonable behaviour leading to unnecessary or wasted expense in the appeal process has not been demonstrated.

6. The second alternative relates to compliance with the National Planning Policy Framework (NPPF) and specifically the application of paragraph 11(d). The applicant contends that the Council failed to carry out the balance in NPPF paragraph 215 ('the heritage balance') to weigh the harms to designated heritage assets against the public benefits. Instead, the applicant argues the Council went straight from identifying heritage harm to applying NPPF paragraph 11(d)(i) to find that there was a strong reason for refusing the development on heritage grounds.

7. It is apparent that the Council did not clearly set out the heritage balance anywhere in its case to this Inquiry and it was absent from the proof of evidence of the Council's planning witness. Under cross-examination, the Council's planning witness conceded that it had not been carried out. When pressed on the matter, he accepted that the heritage balance was passed, meaning the public benefits of the proposed development outweighed the harm to the designated heritage assets.

8. The outcome of this heritage balance means that there was no strong reason for refusing the development proposed having regard to NPPF policies relating to designated heritage assets. However, the witness' concession at the Inquiry did not automatically mean that the Council should have withdrawn its entire case. Although NPPF paragraph 11(d)(i) was not applicable, it remained necessary to consider the balance under 11(d)(ii). At that point, the harms to designated heritage assets needed to be reconsidered alongside any other harms to see whether they significantly and demonstrably outweighed the benefits. It is conceivable that the 11(d)(ii) balance could have led to the proposed development being refused permission based on the weight afforded to the various harms and policy conflicts.

9. Nevertheless, while considerable importance and weight should be afforded to any heritage harm, the Council accepted that significant weight should be afforded to the delivery of housing in this case (as set out in the planning proof of evidence). Along with other public benefits, this was enough to outweigh the moderate and low levels of less than substantial harm to designated heritage assets and pass the heritage balance as the concession at cross-examination revealed. Therefore, the Council should not have been defending the second reason for refusal which states that the heritage balance was not passed.

10. The two parties were not far apart in terms of the amount of harm afforded to the conservation area and the listed farmhouse and afforded similar weight to the housing delivery benefits. If the Council had accepted earlier that the heritage balance was passed, heritage matters would not have been contested as a potentially determinative main issue and would not have needed formal evidence and cross-examination at the Inquiry. Therefore, by not carrying out the heritage

balance in a prompt and timely manner, the Council exhibited unreasonable behaviour which has led to unnecessary and wasted expense in the appeal process.

11. The points made by the parties about the notification and timing of the costs application are noted, but the relative late submission of the application does not invalidate its contents and the Council was afforded sufficient time to respond in writing. While the applicant could have responded to the Council's planning proof of evidence before the Inquiry, perhaps in the form of a rebuttal proof, they were not obliged to do so and were entitled to test the Council's case at the Inquiry itself.

12. Although a full award of costs is not justified, I conclude unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of contesting the second reason for refusal and a partial award of costs is therefore warranted.

Costs Order

13. 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 Mid Devon District Council shall pay to Tidcombe Holdings LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Mid Devon 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.

Tom Gilbert-Wooldridge

INSPECTOR