Planning Inspectorate

Costs Decision

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2026

Costs application in relation to Appeal Ref: 6005428
Land Off Nutts Lane, Holbeach St Johns, Spalding, PE12 8RP

- 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 by Mr & Mrs Baxter is for a full award of costs against South Holland District Council.
- The appeal was against the refusal of planning permission for the erection of new innovative self-build dwelling and detached annexe building to provide architectural studio.

Decision

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

Summary of the application

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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 was made in writing and added to orally at the hearing and again with a written statement after the hearing had closed in response to the Council's rebuttal. Relevant to costs, the applicants assert that the Council has acted unreasonably because it did not agree that the issue of archaeology could be satisfactorily addressed by a condition. The Council took an inconsistent and flawed approach to flood risk and self-build. A hearing and even the appeal itself could have been avoided had the Council properly assessed the self-build issue. The Council has not properly understood or applied Policy 1 of the Local Plan.

4. The applicant further posits that the Council's conduct added unnecessary complexity to the applicant's evidence submitted with the appeal. The Council's case is vague and inaccurate in relation to the effect of the proposal on the character and appearance of the area. In making its case it misapplied Paragraph 139 of the then Framework. The Council made concessions far too late, at the hearing itself, concessions which ultimately belie a lack of substance in its case.

Reasons

5. Given my findings regarding archaeology, the applicants' assertions in relation to this issue are without merit. Part of the appeal site is in Flood Zone 3. The then Framework required that in such situations the sequential test be undertaken. The Council cannot be held to have acted unreasonably in refusing the scheme in the absence of a sequential test when it was (and is) Government policy that that test be provided. The way the officer report deals with that policy requirement against the more nuanced approach espoused by the SFRA may be considered wrong or an outlier, but it is based on given reasoning and so was not unreasonable.

6. The sequential test submitted with the appeal is fully fledged and more aligned with the Council's requirements expressed within the officer report, compared to the relatively more cursory approach adopted by the Design and Access Statement which accompanied the planning application. This issue amounts in essence to a legitimate disagreement of interpretation between the main parties. Indeed, all of the supporting technical documents served a necessary purpose in this case, responding to site specific constraints. Given such, I do not agree that the Council has added any unnecessary complexity to the appeal process.

7. The Council's case around the character and appearance issue was adequately substantiated in the officer report and thereafter. This is essentially a case of differing planning judgments. Paragraph 139 of the Framework allowed for negative weight to be applied where it was found that a scheme would not be well-designed. The sustainability credentials of the design were also acknowledged by the Council.

8. That said, the officer report does not undertake a planning balance that accounts for the self-build issue properly, nor does it reflect the Council's duty to provide enough plots. It fails to grapple with the arguments supporting the application relating to unmet need in the Design and Access Statement. The Council sought to rectify this by relying on its recently published self-build report at the appeal. The costs regime is principally directed to conduct during the appeal itself. An example of unreasonable behaviour is where a Council does not substantiate reasons for refusal at appeal. With the self-build report, and its statement of case, that is done to an adequate standard, with a proper planning balance exercise. With regard to the self-build report, if evidence does not exist at one stage, a party cannot reasonably be criticised for relying on it when it subsequently becomes available.

9. Furthermore, I am not persuaded that the officer report necessarily led to the submission of the applicants' self-build evidence at the appeal in any event. The proposal is essentially predicated on its self-build credentials, the applicants are on the self-build register, Mr Parker strike me as an expert on the subject, and logically it was in the applicants' best interest to make as strong a case as possible. Self-build is a topic I had to explore in detail, and the work carried out falls squarely within the ambit of costs parties are normally expected to bear themselves.

10. Going further, I find it important to draw a distinction between work the applicants chose to undertake to provide as robust an appeal as possible, rather than work the applicants were forced to undertake as a direct result of unreasonable behaviour. In my view, the appeal submissions fall clearly within the former. I have dismissed the appeal even though I did not entirely agree with all the Council's reasons for refusal, and whilst accepting that the unmet need for self-build is in line with the applicants' position. It logically follows that the Council's case was not without substance.

11. The Council's evolving application of Policy 1 leaves a little to be desired. However, as the decision maker I am duty bound to offer my own interpretation and this is something I wanted to bottom out at the hearing regardless. As I have dismissed the appeal, the Council's approach to Policy 1 has not delayed a development that should have been permitted, and given the multiple reasons for refusal, some of which I have agreed with, logically the appeal could not have been avoided.

12. Nothing in the SoCG leads me to conclude that the Council were duty bound to have conceded any of its case earlier than it did. To suggest otherwise represents an excessively critical over analysis of the statements within that document. For

example, it is trite that housing can in certain circumstances be located in the countryside in accordance with Policy 1, but that does not mean that the appeal proposal itself accords with the spatial strategy when assessed on its own merits.

13. As for the hearing, this procedure was also the applicants' choice and was put forward for several reasons not all related to self-build, including the dispute about whether the annexe would function as such. Some concessions were made at the hearing and not earlier, but that is because at the hearing the respective cases of the parties were tested in the normal way. The length of the hearing was proportionate to allow me to understand and conclude against the evidence.

14. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense at the appeal has not occurred and an award of costs is not warranted.

Matthew Jones
INSPECTOR