
Costs Decision

Site visit made on 15 December 2022

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Costs application in relation to Appeal Ref: APP/V1505/W/21/3281405 Land rear of Pickwick, Gardiners Lane North, Crays Hill, Billericay CM11 2XA

- 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 Mr C Jeakins for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of planning permission for 'Revised Application for Erection of Dwelling in Lieu of Existing Garage, Shed and Stable'.
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Decision

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

Reasons

2. 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 PPG sets out various types of behaviour which may give rise to a substantive award of costs, including failure to produce evidence to substantiate each reason for refusal on appeal; not determining similar cases in a consistent manner; and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
4. The officer report sets out the Council's reasoning and assesses the scheme against relevant local and national policies. It is clear from the officer report that the Council applied the overarching national planning policy in the National Planning Policy Framework (the Framework) and assessed the proposal against the relevant exception in paragraph 149.
5. The report sets out which parts of the proposal resulted in the conclusion that it would be inappropriate development, having regard to the previous Inspector's decision¹. Although not mentioned in the report, the Council's reason for refusal sets out that there were no very special circumstances evidenced to justify a departure from the Framework. There is therefore no indication in the report that national policies were not considered relevant, indeed they formed the basis of the Council's reason for refusal.

¹ APP/V1505/A/20/3247736

6. The previous Inspector's reasoning sets out the factors that led to their conclusion that the previous proposal would be inappropriate development, in particular its overall size, height and bulk. While the Inspector considered the proposal in context when assessing openness, they did not specifically consider the impact of that proposal on the character and appearance of the area. Although it may be possible to interpret from their reasoning what parts of the scheme could be altered, the Inspector did not make suggestions about changes that would make the scheme acceptable, as the appellant suggests.
7. It is evident from the Council's officer report that regard was had to the previous appeal decision, which it quoted at length. However, it also acknowledges that the current proposal would 'now also be single storey in scale' and the reasoning recognises the smaller size of the dwelling when assessing openness. The Council also found that concerns about the conspicuousness of the previous scheme had been partly addressed by this revised proposal. Consequently, I am content that the Council recognised the material differences between the appeal proposal and the previous scheme, and took into account the previous Inspector's comments when reaching its decision.
8. The Council's officer report does not reference a development nearby at 'Saremma', mentioned in the application documents and correspondence between the parties. The appellant has provided information about relative sizes of buildings and factors that they consider were similar between the two schemes. There is however contrasting information from the parties in respect of a commercial use on that site and whether it was to remain or cease. I do not have the plans or officer report before me. Importantly, I do not know whether the other scheme was found to be 'not inappropriate' development or was inappropriate development where very special circumstances justified granting permission and, if so, what those circumstances were.
9. As Saremma was brought up by the appellant as a possible precedent in respect of the appeal proposal, it would have been very helpful for the officer report to reference that scheme and explain why a different view was taken. Nevertheless, there is not enough information before me to be able to conclude that the two schemes were similar enough that the Council's decision-making was inconsistent.
10. Consequently, I cannot conclude that the Council has not determined similar cases in a consistent manner. There is no compelling evidence before me that considering the Saremma scheme in more detail when assessing the appeal scheme, would have led to a different decision being reached. Therefore, no unreasonable behaviour has been demonstrated in that respect.
11. The Framework sets out a presumption in favour of sustainable development in paragraph 11. This presumption is engaged if one of several criteria are met, including where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, meaning that the most important development plan policies are considered to be out of date.
12. The Council's officer report includes a Planning Balance section which sets out what the Council considered to be harmful effects and other factors which were afforded neutral weight. It weighs these against the benefit of providing an additional dwelling, noting the Council's housing target shortfall. Importantly, the section ends by noting that paragraph 11d of the Framework would apply.

It appears therefore, that the Council did apply the presumption in favour of sustainable development, although the wording from that presumption is not specifically used.

13. In its submission in response to this Costs application, the Council now suggests that under footnote 7 of the Framework, the presumption in favour of sustainable development does not apply as the site is in the Green Belt. Paragraph 11d)i. and footnote 7 disengage the presumption where the application of certain Framework policies, including those for Green Belt, provide a clear reason for refusing the development proposed. Therefore, given the Council's conclusions on Green Belt policy, potentially the presumption in favour could have been disengaged through this exception. Nevertheless, the Council's report did apply paragraph 11d) in its planning balance.
14. Accordingly, there is no compelling evidence before me that the Council did not apply the presumption in favour of sustainable development in reaching its decision.
15. The document "Procedural Guide: Planning appeals – England" sets out in paragraph D.4 that the relevant documents considered during the application process should be sufficient to present the local planning authority's case. There is no requirement for the Council to produce a statement of case, and it was entitled to rely on its officer report as its case in the appeal.
16. The Council's officer report would have benefitted from more clarity in the areas set out above, which could have helped to avoid any confusion as to its reasoning. Nevertheless, I am satisfied that the main body of the report clearly set out the Council's points and was sufficient to substantiate its case at appeal.
17. I have reached a different conclusion to the Council in relation to the effects of the proposal, however this was an exercise in planning judgement. The weight to be given to the various factors is a matter for the decision maker. Elements of this scheme were finely balanced, and it was not a case where it should clearly have been permitted.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L McKay

INSPECTOR