



Costs Decision

Site visit made on 11 April 2023

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Costs application in relation to Appeal Ref: APP/M1520/W/22/3301883 Cornerclub, 149 High Street, Canvey Island, SS8 7RQ

- 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 Lee Petch for a full award of costs against Castle Point Borough Council.
 - The appeal was against the refusal of planning permission for upwards development to create 4no. new-build residential flats with associated car parking and waste management on site.
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Decision

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

Reasons

2. 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.

The Application

3. The first refusal reason cannot be supported because there is no permission on the adjoining land, it is not allocated, but simply within the settlement boundary. It is fundamentally wrong to give precedence to development on neighbouring land. Furthermore, the council has not given the correct weight to the proposed development on the basis of the 'tilted balance' under paragraph 11 of the National Planning Policy Framework. There is no basis for the second refusal reason since the flats are all above the space standards, and the items mentioned (cleaning materials, etc) can easily be located within the floorspace given the size of the flats. The third reason is plainly wrong since the site is in an accessible location with excellent public transport links and facilities and services within walking distance. Refusal reason 4 ignores the prevailing character of the area where frontage parking is not an alien feature, and is commonplace.
4. As a result of the above flaws in the council's decision, it has been necessary to instruct a chartered town planner to prepare the appeal documents and the costs application, including attending the site and making a professional appraisal of the merits of the case.

The Rebuttal

5. The points made against the first reason for refusal, including the matter of the 'tilted balance' are matters of planning judgement and the officer's report adequately deals with the matter and reaches a balanced judgement. The national space standards are very much a matter for consideration in a decision about a proposed development. It was reasonable for the council to reflect in its decision that the standards are not met. The council's conclusions on the sustainability of the site were fully explained as was the reason that the bus services would not necessarily discourage the use of private vehicles, notwithstanding that the highway authority did not object to the scheme. The fourth point about the visual effect on the area is a matter of planning judgement, which is adequately explained in the council's case.
6. There is no basis for finding that the council has acted unreasonably or caused the appellant to incur unnecessary or wasted expense in the appeal process.

Conclusions

7. It will be seen from my decision on the appeal against the council's refusal of permission that I have found in favour of the appellant, now claimant. But that does not automatically lead to an award of costs.
8. In this case however, taking the set of refusal reasons as a whole, it is difficult to conclude that the differences between the appeal parties, and my decision, are simply matters of planning judgement. Taking the first matter, there is no recognition in the council's case that the lapse of 9 years from the 2013 permission to the council's decision on the present case is not an indication that the other land is not attractive as a development possibility, and nor is there any acknowledgment that the appeal proposal would deliver more dwelling units than the 2013 proposal.
9. The other refusal reasons are difficult to understand as simply differences of planning judgement. I cannot see how the technical housing standards can be interpreted in the way that the refusal suggests. Similarly, the council's assessment of the appeal site as a sustainable location, when seen against the highway authority's view, together with that authority's use of the reduction in the parking standard available in the adopted parking standards, does not amount to a clear and robust reason for refusal. The fourth reason cites frontage parking, when the proposal is for parking along the side of the appeal site, not on the frontage.
10. Taking these matters together, I conclude that the council's refusal of the appeal proposal was not supported by adequate reasoning and evidence.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 Castle Point Borough Council shall pay to Mr Lee Petch, the costs of the appeal

proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Castle Point Borough 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.

Terrence Kemmann-Lane

INSPECTOR