



Costs Decision

Site visit made on 20 March 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2023

Costs application in relation to Appeal Ref: APP/G2245/W/22/3297714 Perran, Charles Road, Badgers Mount TN14 7BB

- 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 N De Palma for a full award of costs against Sevenoaks District Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for the creation of an infill plot and the erection of a detached dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that irrespective of the outcome of an 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.
3. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.
4. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis; and where similar cases have not been determined in a consistent manner.
5. The applicant has applied for costs on the basis that the Council has prevented or delayed development which they consider should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and has failed to produce evidence to substantiate its reason for refusal on appeal.
6. The applicant contends that the Council has behaved unreasonably by failing to recognise that the Sevenoaks District Council Local Plan Supplementary Planning Document: Development in the Green Belt (2015) (the SPD), which

sets out a definition of limited infill development in the Green Belt, is not consistent with the National Planning Policy Framework's (the Framework), approach to infilling in villages and should therefore have been given limited weight in determining the appeal proposal.

7. Furthermore, the applicant contends that the Council has not only failed to give due weight to an allowed appeal at the nearby site of Haresfield¹, despite the same policy context applying and the site circumstances and context being identical to the current appeal, but has also relied upon a number of appeal decisions that are not comparable to the current appeal. In doing so the applicant contends that the Council has failed to produce evidence to substantiate its reasoning for not determining the appeal proposal in a manner consistent with the Haresfield appeal.
8. In essence, the applicant's case is that the Council should have given limited weight to the SPD's definition of limited infill development in the Green Belt, and it should have given due weight to the Framework's approach to limited infilling in the Green Belt, as per the various appeal decisions provided by the applicant. Had the Council done so, and had it followed the Inspector's approach to the analysis of infilling in the nearby Haresfield appeal, the applicant suggests planning permission should have been granted.
9. I note that the Inspector on an appeal in Seal² set out his view that the SPD could only carry limited weight in the circumstances of that particular case. However, in refusing planning permission for the appeal proposal, I find that the Council gave adequate reasons to substantiate its reliance upon the SPD, as a material consideration, in determining whether the appeal proposal complied with the SPD's definition of limited infilling within the Green Belt, and the approach to limited infilling in villages set out in the Framework.
10. In support of its approach, the Council's appeal statement identified 2 appeal decisions within the Council's area, in which the respective Inspectors had applied the SPD's definition of limited infilling within the Green Belt. In one of those decisions (in Halstead³), the Inspector considered the SPD's definition of infilling to be consistent with the Framework. In the other appeal decision⁴, the Inspector assessed the proposal against the SPD's definition. Although the site specific circumstances in those 2 appeals, which predate the Seal appeal, may or may not be comparable to the appeal proposal before me, it was not unreasonable for the Council to submit them with its Statement of Case in defending this appeal. They do not, in my view, amount to fresh and substantial new evidence.
11. In determining the appeal proposal, the Council provided an objective analysis and explanation as to why the characteristics of the site, its surroundings and context justified reaching its decision that the appeal proposal did not comply with the SPD's definition of limited infilling in the Green Belt. Given that the Council has a distinctive local approach to the definition of limited infilling set out within the SPD, the approaches taken in the appeal decisions outside of the Council's area are of limited relevance to this case.

¹ Appeal Decision APP/G2245/W/19/3230759

² Appeal Decision APP/G2245/W/21/3271885

³ Appeal Decision APP/G2245/W/20/3251751

⁴ Appeal Decision APP/G2245/W/20/3264586

12. In these respects, the Council produced sufficient evidence and reasoning to justify apportioning weight to the SPD in refusing planning permission for the appeal proposal, and it was not bound by the Seal appeal decision to give limited weight to the SPD.
13. In determining the planning application, the Council clearly had regard to the Haresfield appeal decision and the applicant's submissions that the site circumstances and context of Haresfield are identical to the current appeal. The Council did not provide a detailed explanation setting out the extent of the similarities and differences between the two sites and their respective circumstances and contexts. However, it did address the matter in so far as it considered the Haresfield site to not be entirely comparable to the appeal proposal before me. As such, it was not unreasonable for the Council to reach a different decision in the current appeal to that reached by the Inspector in the Haresfield appeal.
14. For these reasons, I find that the Council did not refuse planning permission for a development that should otherwise have been granted planning permission, and in so doing it adequately substantiated its reason for refusal with due regard to its own evidence and that submitted by the applicant. In this instance, the applicant's time and expense was a necessary part of the appeal process.

Conclusion

15. Based on the evidence before me and for the reasons I have given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. An award of costs is therefore not justified.

G Sylvester

INSPECTOR