

Costs Decision

Site visit made on 22 September 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Costs application in relation to Appeal Ref: APP/V1505/W/23/3317008 Land East of Denewood, Studland Avenue, Wickford, Essex

- 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 Mrs Beth Deacon for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of planning permission for the construction of a 3 bedroom chalet, associated garage, parking area and driveway.
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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 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. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority refuses to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
4. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, the PPG states that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded¹.
5. The applicant seeks a full award of costs on the basis that the Council failed to engage positively and proactively with them in order to seek solutions to its objections. It did not request further information from the applicant, which could have been provided and addressed during consideration of the planning application, rather than through the appeal process. If the Council had allowed additional time for the application to be revised and information submitted, the applicant contends that the number, range and scope of reasons for refusal could have been reduced.
6. In response, the Council has explained that the planning application was determined within the 8-week target date and that in most circumstances, it discharges its duty in the National Planning Policy Framework (Framework) to

¹ Paragraph: 033 Reference ID: 16-033-20140306.

"work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area" through a pre-application advice service and it is not obliged to engage in discussions during a 'live' planning application in all circumstances.

7. On the evidence before me, there is no binding obligation upon the Council to engage in discussions with applicants during the consideration of a planning application or seek additional information from applicants. Framework Paragraph 39 encourages good quality pre-application discussion to front-load the process and improve the efficiency and effectiveness of the planning system for all parties. I have no evidence to indicate the applicant used the Council's pre-application service in respect of the appeal proposal.
8. Nonetheless, the applicant could have been given the opportunity to provide additional information to the Council, such as a legal agreement, preliminary ecological assessment, or amended drawings to resolve concerns over the dormers. However, notwithstanding my findings in the appeal decision, I have no reason to find that it would necessarily have resolved, or even narrowed, the matters in dispute between the parties, particularly given the Council's position on the inappropriateness of the proposed development in the Green Belt. Therefore, the outcome of the planning application would likely have been the same, and so the appeal would still have been necessary, along with the expense associated with it.
9. The applicant contends that not all consultee comments were shared by the Council. The submitted emails indicate that the applicant was unable to view a consultee comment on 15 August 2022, and another on 23 August 2022. In response, the Council Officer provided 3 consultee comments on 24 August 2022, and informed the applicant, in the context of the target date for a decision, that they were likely to hear the outcome shortly before or on the target date. Although the Council's Ecological Consultant submitted their comments on the planning application after it had been refused permission, I have found in my main decision that refusing planning permission due to the absence of a preliminary ecological appraisal was justified.
10. The applicant contends that the Council effectively ignored an invitation to extend the determination date of the application and issued a refusal notice the following day. However, none of the several submitted emails of correspondence between the applicant and the Council's Officer, appear to include a clear invitation to extend the determination date of the planning application. Even if an invite was made by the applicant, I have not been made aware of any obligation on the part of the Council to agree to extend the target date for a decision on a planning application. Framework Paragraph 47 states that decisions on planning applications should be made as quickly as possible, and within statutory timescales.
11. The applicant contends that the Council's statement that *"No services or facilities of any kind are available in the surrounding area"*, in reason for refusal number 1, is untrue. To my mind, the extent of the 'surrounding area' of the application site and whether there are services or facilities within it, is a matter of planning judgement. Although this judgement was not clearly substantiated in the Council Officer's Report, the report did clarify that there are a limited number of communal facilities in the immediate area and that residents of the appeal site would need to travel to access services and facilities that they are

likely to require on a daily basis. As such, this statement does not amount to unreasonable behaviour resulting in wasted expense. Had it not been made, the outcome of the planning application would likely have been the same, and so the appeal, and the expense associated with it, would still have been necessary.

12. For these reasons I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

G Sylvester

INSPECTOR