



Costs Decision

Site visit made on 19 December 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Costs application in relation to Appeal Ref: APP/M1520/W/23/3320925 Garden World Plants Ltd, Canvey Road, Canvey Island, Essex SS8 0QD

- 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 S Howard for a full award of costs against Castle Point Borough Council.
 - The appeal was against the refusal of planning permission for proposed development described as 'demolition of existing buildings and construction of residential care home comprising of 55 No. units'.
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Decision

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

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. The PPG goes on to provide examples of unreasonable behaviour by Local Planning Authorities, which include amongst other things preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations, acting contrary to, or not following, well-established case law and not determining similar cases in a similar manner.
4. The costs application contends, with reference to the above examples in the PPG, that the Council acted unreasonably in a substantive sense. In particular, it is alleged that the Council failed to have regard to relevant material considerations which had been brought to its attention. Although a relevant fallback position had been detailed in the Officer Report, the appellant contends that this was not given due consideration in the decision-making process. Therefore, the appellant considers that the Council acted contrary to well-established case law that a relevant fallback position should be treated as a material consideration.
5. The appellant further alleges that the Council failed to provide evidence to substantiate each reason for refusal, making vague, generalised assertions about the proposal's impact which were unsupported by any objective analysis. Finally, given the similarities between the appeal proposal and the fallback scheme, the appellant alleges that the Council acted unreasonably in not determining similar cases in a similar manner.

6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached it should clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In response to this appeal, the Council has provided a factual statement setting out the events leading to its decision and identifying the key relevant documents. However, it has not provided any substantive evidence to support the two reasons for refusal, other than a single sentence briefly summarising concerns raised at the relevant Committee meeting. The Council has also elected not to make any representations in response to the application for costs, while confirming that this should not be regarded as an admission that it behaved unreasonably.
7. The Officer Report on the planning application clearly identified the fallback position represented by an extant planning permission for a 60-bed care home¹ as a material consideration. This was a significant factor contributing to the Officer recommendation that planning permission should be granted, on the basis that there were very special circumstances outweighing the harm to the Green Belt. There is reference to lack of very special circumstances in the first reason for refusal. However, I have been provided with no substantive evidence that the specific circumstances surrounding the fallback scheme were properly weighed in the planning balance when the Council decided to determine the application contrary to the Officer recommendation.
8. As set out in my decision on the appeal, there is no reason to doubt the appellant's intention to implement the fallback scheme, if necessary. This would cause greater harm to the openness of the Green Belt and would be less beneficial than the appeal proposal in other respects. This was explained in the Officer Report. In the absence of any clear evidence that this material consideration was adequately considered, I find that the Council acted unreasonably.
9. In addition, the Council had concluded in 2018 that there were very special circumstances to justify permitting the fallback scheme. The appellant also says the Council concluded that very special circumstances existed in 2021, when considering an alternative proposal², although that application was refused for other reasons. I have been provided with no evidence to the contrary. These previous decisions were made in substantially the same policy context, in relation to the redevelopment of previously developed land in the Green Belt. While it is a well-founded principle of the planning system that each proposal should be considered on its own merits, in this particular case, given the clear similarities with previous proposals on the site, there was an unreasonable level of inconsistency in the Council's approach.
10. Turning to the second reason for refusal, the design of the appeal proposal differs in a number of respects from the fallback scheme. As such, it was not unreasonable for the Council to consider afresh what effect the proposal would have on the character and appearance of the area or living conditions within neighbouring properties. However, no evidence has been provided to substantiate the conclusions reached. Again, having had regard to the similarities with the fallback scheme, in terms of the proposal's massing, scale,

¹ Castle Point Borough Council Outline Planning Application ref 17/1063/OUT, granted 7 November 2018 and Reserved Matters Planning Application ref 21/0922/RES, granted 8 June 2022

² Castle Point Borough Council Planning Application ref 21/0361/FUL, refused 8 September 2021

layout and relationship with the site boundaries, the lack of any such evidence to justify reaching a different decision in this case is unreasonable.

11. For the above reasons, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The Council was also inconsistent by not determining similar cases in a similar manner. This constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has consequently been faced with the unnecessary expense of lodging the appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is warranted.

Costs Order

13. 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 S Howard, 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.
14. 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.

Jane Smith

INSPECTOR