



Costs Decision

Site visit made on 18 January 2024

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Costs application in relation to Appeal Ref: APP/D0121/W/23/3324203 Greenacres, Kenn Road, Clevedon, North Somerset BS21 6TT

- 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 North Somerset Council against Mr Terry Mydlowski for a full award of costs against.
 - The appeal was against the refusal planning permission for ground and first floor living accommodation with two bedroom.
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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 further identifies that an award of costs against appellants may be made on a substantive basis, relating to the planning merits of the appeal. Examples of this include where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
4. An award of costs on substantive grounds can also include where the development is clearly not in accordance with the development plan and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
5. The appeal follows the dismissal of a relatively recent appeal (ref: APP/D0121/W/21/3282499) by the same applicant, for the development of two dwellings on an adjoining site that also overlaps the current appeal site. That appeal was dismissed on several grounds, namely due to it being considered an inappropriate location for residential development with regards to the Council's spatial strategy and accessibility to facilities and services; the site being an unacceptable location due to its vulnerability to flooding; its effects on the character and appearance of the area; and its effects on highway safety.

6. The current appeal scheme is for a single dwelling, while its precise location and design differs from the dwellings in the appellant's previously dismissed appeal. Nevertheless, it remains that both schemes share very similar contextual and policy issues. This includes matters of principle relating to the location of the site and its access to facilities and services, as well as its vulnerability to flooding.
7. In respect of the site's location conflicting with the Council's spatial strategy and poor access to facilities and services, the appellant has highlighted a need for the proposed dwelling to provide support and care for family members already residing at the site. It was advanced that this would provide sustainability benefits in terms of reduced vehicle trips from the site. Whilst there may be a genuine need for existing residents to receive support or care, no specific details of their circumstances or the extent of their requirements have been provided through the appeal. As such, there is inadequate evidence to support this material consideration.
8. Furthermore, the appeal site remains in Flood Zone 3, as per the previously dismissed appeal scheme. In dismissing the previous appeal, the Inspector highlighted the need for the proposal to pass the sequential test for flooding and found that, due to the very limited information provided, this could not be demonstrated.
9. The appellant has provided details of a sequential search for alternative sites that was undertaken in connection with the latest proposal. However, as is discussed in my main report this exercise appears severely flawed. Indeed, given the inadequate supporting evidence, I find that the appellant's alternative site search selection process was based upon completely unjustified criteria and lacks credibility. Concerns about the robustness of the sequential test were outlined as part of the case officer's report when refusing the application. Despite this, it remains that inadequate evidence was again provided during the appeal to justify the appellant's approach.
10. Overall, the previous appeal decision and the latest appeal scheme share very close contextual similarities. This includes fundamental matters of planning principle, with the appeal scheme clearly not being in accordance with the Council's development plan. Inadequate evidence has also been provided to justify the appellant's case, particularly in light of matters raised through the Council's decision and the previous appeal decision. These matters would have been known to the appellant or his planning agent, but still a lack of credible evidence was provided during this appeal to support the appellant's position. As such, I consider that there was no reasonable prospect of the appeal succeeding.
11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 Mr Terry Mydlowski shall pay to North Somerset Council, 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 Mr Terry Mydlowski, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Lewis Condé

INSPECTOR