



Costs Decision

Site visit made on 16 April 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Costs application in relation to Appeal Ref: APP/D1590/W/23/3332965, 5 Smallholdings, Eastwoodbury Lane, Southend-On-Sea SS2 6UZ

- 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 Brian Harding for a full award of costs against Southend-on-Sea City Council.
 - The appeal was against the refusal of planning permission for a two-storey single dwelling situated on the land east of 5 Smallholdings.
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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. In claiming the costs of the appeal, the applicant submits that the Council has acted unreasonably in substantive terms. It is asserted that the Council's reason for refusal is vague, inaccurate, includes unsupported generalised assertions and is not supported by objective analysis. Due to the wording of the reason for refusal, the applicant considers the Council misapplied the tests under Paragraph 11d of the National Planning Policy Framework (the Framework). It is also claimed that refusing the application amounts to unreasonable behaviour given the presence of an extant permission for residential development on a site adjacent to No. 1 Smallholdings¹, thereby demonstrating inconsistency in decision making.
4. The PPG makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to substantiate its reasons for refusal at appeal, and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. In respect of substantiating the reason for refusal, the Council provided an appeal statement setting out their case with reference to the development plan and other material considerations. Although I did not share their conclusions, I am satisfied that the Council gave a reasoned assessment for their decision.
6. The wording of the reason for refusal sets out clearly why the Council refused the application, quoting appropriate policies from the development plan. It is not essential that the reason for refusal repeats the precise wording of the

¹ Reference 21/02034/OUT

Framework. Although the balancing exercise undertaken by the Council was not explicitly framed in relation to paragraph 11d of the Framework in their reason for refusal, based on their submissions in response to the costs claim, I have no reason to conclude that the paragraph 11d balance was not carried out.

7. Based on the information before me regarding the residential development at the site adjacent to 1 Smallholdings, there are material differences to the appeal scheme, not least in terms of the characteristics of its location and the quantum of development. Although I acknowledge it would have raised similar issues in relation to the loss of agricultural land and open space, the balancing exercise would necessarily have been based on the individual merits of that scheme. I find there is little evidence to suggest that the Council behaved unreasonably in making a different decision on the appeal proposal.
8. The decision in this case hinged on making a judgement as to the relative weight to give the policy conflict and other material considerations including the presence of an extant permission for residential development nearby. The planning committee were entitled to come to a different view to officers when applying their judgement in relation to the test as set out in paragraph 11d of the Framework in terms of the loss of BMVAL and erosion of the green buffer and open space, relative to the benefits of the scheme. The Council had a reasonable basis for its stance.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

L Francis

INSPECTOR