



Costs Decision

Site visit made on 21 May 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Costs application in relation to Appeal Ref: APP/A1720/W/23/3332174 23 Bridge Road, Park Gate, Southampton, Hampshire SO31 7GD

- 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 Paul Zieba for a full award of costs against Fareham Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for the construction of a detached chalet bungalow with associated bike and bin storage.
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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. The planning application was submitted before the Council adopted the Fareham Local Plan 2037 (the Local Plan). Nevertheless, when the Council determined the application, it had been adopted, including Policy NE2 which relates to biodiversity net gain (BNG). I acknowledge that at this time the legislation¹ mandating BNG had not been enacted. However, as set out in my appeal decision, the version of the National Planning Policy Framework (the Framework)² in place at the time of determination of the application did not preclude the Council from adopting its BNG policy.
4. Moreover, it stipulated that plans should identify and pursue opportunities for securing measurable net gains for biodiversity and I have concluded that Policy NE2 of the Local Plan is broadly consistent with the Framework in this respect. Therefore, as the planning application sought full planning permission and would result in a separate consent from the extant original permission³, the Council did not behave unreasonably by imposing a BNG condition which would ensure the proposed development complied with its policy.
5. I appreciate the applicant's frustration with the lack of BNG credits available within the Borough. However, the purchase of credits was not the only way the BNG condition could have been discharged, following the Council's mitigation hierarchy. I have no substantive evidence before me to demonstrate an alternative method of compliance could not have been pursued.

¹ The Biodiversity Gain (Town and Country Planning)(Modifications and Amendments)(England) Regulations 2024

² Published 5 September 2023

³ Council ref: P/21/0391/FP January 2021

6. Although the Applicant asserts that the proposed development meets the self-build or custom-built development criteria set out in the Self-build and Custom Housebuilding Act 2015 and is therefore exempt from the mandatory BNG. Nonetheless, at the time the Council made its decision the regulations stipulating which developments are exempt from the BNG requirements⁴, were not in place. Despite reference being made to the potential exemption of self-build during the consultation period⁵ of the draft regulations, it was not possible for the Council, or anyone else, at that time to be certain it would apply to the proposed development. Regardless, as I have highlighted in my appeal decision, even if I were to conclude the proposed development comprises a self-build dwelling, the condition suggested by the Council has significant shortcomings regarding its enforceability.
7. I understand that the Applicant has funded the submission of an application to vary the BNG condition imposed on this planning permission and appointed relevant professional services to assist with this. However, I have not been persuaded that the submission of a further application was the only method available to the Applicant to resolve the issue, particularly given this appeal had already been lodged at the time it was submitted. Nor does it imply the imposition of a pre-commencement condition was an unreasonable restriction, particularly as the application form confirmed the development had not commenced at the time of submission.
8. I acknowledge that the time taken by the Council to determine the application may have been frustrating to the Applicant. Whilst the Applicant asserts this caused a delay to the commencement of the proposed development, the evidence before me indicates a genuine willingness of the Council to work with the Applicant to minimise such delays. Whilst there were no objections to the proposed development, this does not mean a planning application can be determined more quickly.
9. I have found that the Council acted reasonably in determining the planning application in accordance with the Local Plan as this has been adopted at the time the decision was made.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Juliet Rogers

INSPECTOR

⁴ The Biodiversity Gain Requirements (Exemptions) Regulations 2024

⁵ Consultation for Biodiversity Net Gain Regulations and Implementation, January 2022