
Costs Decisions

Site visit made on 25 July 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Costs application in relation to Appeal Ref: APP/K1128/W/23/3333034 Land North of A379, Frogmore, Kingsbridge TQ7 2NT

- 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).
 - Application A is made by Build1 Ltd for a full award of costs against South Hams District Council.
 - Application B is made by South Hams District Council for a partial award of costs against Build1 Ltd.
 - The appeal was against the refusal of planning permission for outline application with some matters reserved for the erection of 3no. self-build dwellings together with associated works. Matters relating to access and site layout are submitted for consideration. Matters relating to appearance, landscaping, plot layout and scale are reserved for future consideration.
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Decision

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Initial submissions for Build1 Ltd

3. The application is for a full substantive award of costs on the basis of unreasonable behaviour by the Council in handling the application and refusing it on the grounds stated. The unreasonable behaviour comprises a failure to clearly and precisely set out their full reasons for refusal, specifying all relevant policies and proposals in the development plan, citing policies in the refusal notice which are not relevant to the proposal, making accusations of conflict with policy when the threshold of the policy has not been met, and failure to have regard to the imposition of planning conditions which could have addressed an issue of concern.

Initial response and submissions for the Council

4. The Council state that Build1 Ltd.'s cost claim is without adequate detail, boils down to a disagreement of judgement that does not make good grounds of an award and that they had a right of appeal which has been taken. The Council state that the decision has been presented in clear terms as detailed in the officer report and decision notice, supported by planning policy and guidance and the reasonable exercise of judgement and that its conduct has been entirely reasonable. They further state that Build1 Ltd do not state an allegation of wasted expense has been made, fail to properly substantiate any examples from the Planning Practice Guidance (PPG) of unreasonable conduct because they cannot, and as the conduct of the Council is exactly in both

categories where the PPG says that costs should not be awarded. Finally, the Council acknowledge that there was an error in referencing Policy DEV7 but state that this is no more than de minimis in nature with other policies being relevant and it being clear and obvious from any fair reading which parts of the policies are infringed with an appeal decision¹ provided as an example.

5. The Council further state that Build1 Ltd.'s costs claim is itself unreasonable and that the Council have been put to the unnecessary expense, although only a small amount, of having to consider and respond to it. They reference another appeal decision² where costs were awarded on a similar basis.

Response from Build1 Ltd to the Councils costs claim

6. Build1 Ltd state that the invitation to the Council to respond to the costs claim is not an opportunity for the Council to submit comments in relation to the planning merits of the case and it is clear that this has happened. This is improper and inappropriate, and it is requested that the comments are disregarded along with the appended appeal decision with the Council reminded that the failure to adhere to deadlines is another ground for unreasonable behaviour.
7. Build1 Ltd further state that the grounds for the case for costs is detailed throughout their Statement of Case with the Council failing to cite precise reasons and specific parts of long policies and demonstrating unreasonable behaviour due to the need to assess the proposal against the whole of the policies. It is stated that such costs could have been avoided if the Council engaged during the application process. Furthermore, the Council should have alleged conflict with the neighbourhood plan if it wishes to allege conflict with it, have included policies in the refusal notice which are not relevant (Policy SPT3, DEV7 and DEV26) and failed to acknowledge that planning conditions could have been used to overcome the fourth reason for refusal with the 'precautionary approach' taken outside of the development plan policy framework being dangerous and irresponsible.
8. In response to the Council's cost claim, this is purely on the basis that they had to respond to the claim against them rather than being related to the merits of the appeal itself. There is a right to apply for costs and to put forward the case and it is part of the planning function of the Council to respond. Furthermore, the response states that for clarity, the award of costs is based on the PPG with regard to preventing or delaying development that should clearly be permitted, failure to produce evidence to substantiate each reason for refusal, refusing planning permission on a ground capable of being dealt with by condition(s), and not determining similar cases in a consistent manner. The Council cost claim should therefore be dismissed.

Reasons

9. The PPG advises that irrespective of the outcome of the appeal, 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.

¹ APP/K1128/W/20/3255390

² APP/V0510/W/21/328449

10. With regard to Application A, the Council outlined its case in sufficient detail and in a reasonable manner in its Planning Application Report referencing the main development plan policies. The Council's concerns are clear from the report and decision notice. Although a policy was referenced that was not related to the proposal, the Council have acknowledged this error. This error did not lead to a level of unnecessary or wasted expense that would justify an award of costs and was dealt with succinctly within Build1 Ltd.'s appeal case. Although specific parts of policies are not referenced in the decision notice, this is not uncommon or necessary with the Council's position sufficiently clear.
11. While I have found in favour of the appellant with regard to the effect on biodiversity in the main decision, it was not unreasonable for the Council to come to a different decision in this regard from the information before it. Its reasoning adequately explains and justifies its position and was made without the benefit of the further information submitted with the appeal.
12. The Council were within its rights to refuse permission without engaging with the appellant if it considered that it would be unlikely to overcome its concerns.
13. I have found in my main decision that other than Policy DEV7, the other stated policies are related to the proposal. Although the Council did not reference the neighbourhood plan in its reasons for refusal, it is referenced in its Planning Application Report and reinforce the stated local plan policies. Furthermore, the neighbourhood plan policies are referenced in Build1 Ltd.'s Planning and Heritage Statement and by interested parties. As a result, the neighbourhood plan is clearly material to the proposal, has been assessed by the appellant and I do not therefore find that the lack of reference in the decision notice has led to unnecessary or wasted expense.
14. The Council's response to the cost claim focuses on addressing the reasons for the claim and does not to my mind go unreasonably beyond this. The Council did not go beyond any agreed deadlines for the submission of responses with the two appeal decisions referenced responding to matters related to the costs claim with regard to the reference to policies and its application for costs.
15. For the above reasons, I do not find that costs should be made against the Council.
16. With regard to Application B, although I have found in the Council's favour in relation to the main appeal, Build1 Ltd have a right to apply for costs and to put forward its case. Build1 Ltd have clearly detailed the reasons for its costs claim citing grounds within the PPG. Disagreement with the merits of the costs claim does not in itself justify an award of costs. For these reasons I do not find that costs should be made in the Council's favour.
17. In light of the above, I do not find that either party acted unreasonably. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in either case.
18. Therefore, both Application A and Application B for the award of costs must fail.

C Rose

INSPECTOR