



Costs Decision

Site visit made on 5 June 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/Z1510/W/23/3329683 2 Warley Farm Cottages Nuntys Lane, Pattiswick, Braintree CM77 8BL

- 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 Steve Elmes for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for a new two bed dwelling, including landscaping and boundary treatments and a garden store for bins and bikes, with shared access drive.
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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 appellant contends that the Council failed to correctly weigh policies of the National Planning Policy Framework relating to re-use of brownfield land, and that it erroneously cited a failure to provide sufficient external garden space in its second reason for refusal when the garden was suitable in size. The appellant states that the appeal could have been avoided had the Council communicated their concerns during the application period.
4. The Council responds that the application was determined on its merits in line with national and local planning policy, and involved matters of judgement based on the information provided. It adds that the appellant's interpretation of the second reason for refusal is incorrect. Regarding its alleged lack of communication, the Council states that the reasons for refusal were fundamental concerns which could not be overcome through negotiation.
5. As will be seen from my main decision, the support in the Framework for redevelopment of previously developed land (PDL) applies 'within settlements,' which I have found would not directly apply to the appeal site due to its location in the open countryside. There is also some doubt within the evidence as to whether the site should be regarded as PDL under the definition of the Framework. Even allowing for this, the benefits of developing PDL must also be considered against the other aims of the Framework to deliver housing in the most sustainable locations. This is ultimately a matter of planning judgement for the decision-maker, and I have agreed with the Council in my main decision. Therefore, I find no unreasonable behaviour in this respect.

6. The Council's reference to the adequacy of the external amenity space in its second reason for refusal clearly did not relate to the size of the garden, but whether it would provide sufficient privacy for future occupants. The Council provided reasoning for this in its officer report, which was based on plans provided at the time which did not show any boundary treatments. Whilst negotiation during the application may have addressed this particular matter, the Council was entitled to determine the application as made, and its reason for refusal was not unreasonable on the evidence put to it.
7. More generally, I have limited information about the interaction between the appellant and the Council during the application process. However, from my main decision it will be seen that the Council's first reason for refusal did relate to a matter of principle in respect of the location of the development. This would not have been likely to have been addressed by way of negotiation during the application process. Ultimately, I have agreed with the Council's position in this respect, and therefore its stance was not unreasonable.
8. Consequently, I find that unreasonable behaviour leading to wasted expense, as defined by the PPG, has not been demonstrated and an award of costs is not warranted. No award is therefore made.

K Savage

INSPECTOR