



Costs Decision

Site visit made on 30 October 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2025

Costs application in relation to Appeal Ref: APP/B1550/W/24/3343059 Land adjacent Ardleigh House, Hall Road, Rochford SS4 1PD

- 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 J Butcher for a full award of costs against Rochford District Council.
 - The appeal was against the refusal of planning permission for development originally described as 'conversion of stable buildings under substantial construction into a 2 bed dwelling.'
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Decision

1. The application for an award of costs is partly 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 appellant argues that the Council introduced new arguments at appeal relating to the nature of the proposal which were never raised during a lengthy validation process; repeating arguments regarding design and character previously addressed and making unevidenced arguments as to what constitutes previously developed land.
4. The Council has provided a detailed timeline of events leading to validation of the application, which centred around a request for a flood risk assessment. However, the appellant has clarified that he has not sought costs in respect of the validation process itself, but referred to it to highlight that, during this period, no concerns were raised by the Council other than relating to drainage. I address the substantive concerns regarding previously developed land (PDL), design and character and appearance below, but in respect of validation, there is a difference between matters which must be raised because they relate to statutory and local list validation requirements and matters which are material to whether the application should be granted planning permission. I regard the judgment of whether the proposal amounts to PDL and effects on character and appearance as falling within the latter category. Therefore, the Council not raising these matters prior to validating the application was not unreasonable.
5. In respect of the substantive claim regarding the Council's assessment of PDL, this was a main consideration of the appeal relating to the principle of development in the Green Belt, and is a matter inherently requiring planning

judgment having regard to the facts on the ground. This includes whether there is a permanent structure on the land. In this case, the recent analysis of another Planning Inspector was a further material consideration. As will be seen from my main appeal decision, I have exercised my own planning judgment and concluded similarly to the Council in this matter. Therefore, I find that the Council was entitled to pursue this argument at appeal and has not acted unreasonably in doing so.

6. However, with respect to matters of design and character, it is clear from my main decision that the Council has set out contradictory positions in its evidence. Its officer report acknowledges the findings of the previous appeal Inspector that the proposal would preserve the character and appearance of the area, but the decision notice contains a reason for refusal relating to design and character that bears no relation to the preceding analysis. However, it was a carbon copy of the earlier reason for refusal not sustained by the previous Inspector. Rather than acknowledge this as a possible error or oversight, the Council has persisted with its position at appeal. In doing so, it has made no reference in its statement of case back to its own officer's report or the previous appeal decision and offered no cogent evidence to explain its volte-face between the analysis set out at paragraphs 5.61 to 5.70 of its officer report and its subsequent reason for refusal and position at appeal.
7. Moreover, the Council's argument that it was reasonable to reconsider the proposal in light of the updated Framework in December 2023 is undermined by the fact that the positive conclusions of its officer report with respect to design were drafted after that update, and so should have taken the updated Framework into account. It was not a new material consideration only arising at the appeal stage.
8. Therefore, I find that the Council's sustained objection in respect of the third reason for refusal was based on vague, generalised or inaccurate assertions, unsupported by any objective analysis. The Council has failed to substantiate its case at appeal, and its actions in pursuing this matter amount to unreasonable behaviour contrary to the basic guidance of the PPG. Consequently, the applicant has been faced with the unnecessary expense of contesting this reason for refusal at appeal. A partial award of costs is therefore warranted in respect of this matter.

Costs Order

9. 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 Rochford District Council shall pay to Mr J Butcher, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Rochford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Savage INSPECTOR