



Costs Decision

Site visit made on 11 February 2025

by **E Dade BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Costs application in relation to Appeal Ref: APP/A1530/W/24/3352608 Blackheath Bulb Company, Nayland Road, West Bergholt CO6 3DE

- 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 M Nieuwenhuis on behalf of Blackheath Bulb Company for a full award of costs against Colchester City Council.
 - The appeal was against the refusal of planning permission for replacement of three agricultural buildings with three dwellings.
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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. Paragraph 049 of the PPG provides examples of types of behaviour which may give rise to a substantive award of costs against a local planning authority, including failure to produce evidence to substantiate each reason for refusal on appeal and not determining similar cases in a consistent manner.
4. The appellant suggests the Council acted unreasonably through introducing a new reason for refusal relating to the proposal being a self-build scheme; that privacy concerns are unsubstantiated by evidence; and that the Council's assessment of the proposal conflicted with a concurrent scheme.
5. The site has an extensive planning history. Prior approval was granted in 2019 for the conversion of three agricultural buildings into three dwellings¹. The proposal is similar to a concurrent appeal proposal and previous schemes, including a proposal dismissed at appeal in 2022².
6. The statutory Biodiversity Net Gain (BNG) condition is a recent but mandatory requirement of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Other proposals for the site pre-date the introduction of the statutory BNG condition, and therefore were not subject to its requirements. However, the statutory BNG condition would apply to the appeal proposal, unless exempt.

¹ LPA reference: 191409

² Appeal reference: APP/A1530/W/21/3279464

7. The appellant asserts the proposal would be a self-build development and would be exempt from the statutory BNG condition on this basis. It is clear from the decision notice that the Council's concerns in respect of self-build development are expressed within the context of the BNG exemption.
8. As discussed in my decision, the proposal contains no mechanism to secure and retain any proposed dwellings as self-build units. In the absence of such a mechanism, the proposal would not be exempt from the statutory BNG condition.
9. The Council has not therefore acted unreasonably through introducing the third reason for refusal, as indicated on the decision notice. Rather, it has enforced the statutory requirement for BNG, as set out in Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).
10. The parking and access arrangement to the front of the plot 2 dwelling, including two uncovered parking spaces and manoeuvring space serving the whole development, would be close to the windows serving bedrooms 2 and 3. The Council considers this arrangement to be unneighbourly and harmful to the living conditions of future occupants.
11. In my decision, I have reached a different conclusion to the Council. However, assessment of this main issue involves exercising planning judgement, and therefore it does not follow that the Council acted unreasonably.
12. The Council's concerns with the appeal proposal and concurrent scheme relate to the overall architectural approach which would identify the scheme as a residential development and fail to integrate effectively with the character of its rural surroundings. As indicated in my decision, the appeal proposal has failed to address concerns regarding certain design features, as identified by the Inspector in the previous appeal decision.
13. The Council has provided detailed assessment of both the appeal proposal and concurrent scheme, and I do not consider its conclusions to be inconsistent. Therefore, the Council has not acted unreasonably in its assessment of the proposals.
14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and a full award of costs is not warranted.

E Dade

INSPECTOR