



Costs Decision

Hearing held on 25 February 2025

Site visit made on 25 February 2025

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2025

Dovehouse Farm, 27 The Lane, Wyboston, Bedford, MK44 3AP

Costs application in relation to Appeal Ref: APP/K0235/W/24/3353144

- 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 D Buchanan for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for erection of 10 dwellings and associated works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Bedford Borough Council

2. The costs application was submitted in writing prior to the hearing. At the hearing the Council also added that the revised flood risk assessment was required as a result of a change in national planning policy and therefore not the Council's fault.

The response by Mr Buchanan

3. The response was made orally at the hearing.
4. The appellant argued that several of the reasons for refusal require interpretation and balance and the fact that there are 9 reasons for refusal does not mean that the appeal is unreasonable.
5. The fact that the appeal was submitted on the last day should not be held against the appellant, it was still within the time permitted by the Planning Inspectorate. The statement of case is brief because lots of points had already been made. For example, paragraph 1 needs to be read in conjunction with supplementary statements submitted with the application.
6. In terms of the costs that the Council has incurred, there are none in relation to the date of the submission of the appeal. They have not produced any special technical reports to address any of the evidence. The statement of common ground is naturally a two-way process that goes back and forth. Indeed, the Framework advocates a collaborative approach. The statement of common ground was the last opportunity to work together, and we did that.
7. The historic heritage reason for refusal was introduced at a late stage by the Council, but the appellant has not complained about that.

8. Additional costs have only been incurred by the appellant as he has updated the flood risk assessment.

Reasons

9. 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.
10. The reasons for refusal that relate to character and appearance are to some degree about judgement, but as can be seen from my letter there is a clear policy conflict as the site is in open countryside. The appellant put forward very little evidence in their statement of case or at the hearing to explain why they considered the appeal site to be policy compliant and not in open countryside.
11. The issue of reliance on cars is to some degree subjective but again my findings on this matter are not finely balanced. I clearly find in favour of the Council on this main issue. The appellant argues that the site is within or very close to the village boundary, but the village does not have a defined boundary in the development plan.
12. In terms of affordable housing the appellant argues in his statement of case that none is required as it is not a rural exception site. As can be seen from my decision this is not the case, there is a policy requirement for 30% affordable housing. The appellant was unsure at the hearing whether he would be prepared to provide affordable housing but provided no justification for not providing it. Had he been willing to provide it this could have potentially been overcome by way of a Section 106 agreement. I shall return to this matter later in relation to other reasons for refusal.
13. In terms of the requirement for adaptable and accessible homes on the site and the biodiversity net gain requirement this could have been overcome by a planning condition as I have found in my decision letter.
14. Regarding flood risk, whilst the appellant has worked with the Council and Environment Agency on this matter further work is still required and the appellant had not carried out a sequential test when asked at the hearing.
15. As set out in my decision letter several of the reasons could have been overcome through the submission of a Section 106 agreement. I reminded the main parties about the need to submit a Section 106 agreement at least 10 days before the hearing. When nothing was received, I chased the matter again in the week before the hearing. At the hearing the appellant said their solicitor had in the last week tried to contact the Council's solicitor to no avail.
16. This was clearly too late in the process to start the drafting of an agreement, especially when the appeal was submitted in October 2024. I enquired as to whether a unilateral undertaking had been considered rather than a bi-lateral agreement and was given no reason why such an agreement had not been drawn up. Moreover, the Council explained that they have a Planning Obligations supplementary planning document with a Section 106 agreement template in it to assist in cases such as this. I have little evidence to show that the appellant made real efforts to prepare a Section 106 agreement.

17. Indeed, the PINS Procedural Guide for appeals makes it clear that it is the responsibility of the appellant to make sure that a final draft, agreed by all parties, is submitted no later than 10 working days before the hearing opens. I have very little evidence that the appellant made any real attempts to do this. Without a Section 106 agreement, regardless of the findings on other matters I could not have allowed the appeal. This in itself rendered the hearing a waste of time and expense for the Council, both in preparing for it and attending it.
18. In addition, the statement of case submitted by the appellant failed to substantiate the appellant's case. Each reason for refusal was dealt with by way of a very short paragraph, many consisting of a single paragraph.
19. PINS procedural guide states that "a full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal". At the hearing the appellant again provided very little explanation as to why the proposal before me accorded with the development plan.
20. In terms of the late introduction of the historic heritage reason for refusal by the Council, this was provided in advance of the hearing and would not have been a surprise to the appellant given the section in the planning officers report on this matter where the findings were the same as the reason for refusal.
21. Overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

22. 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 Mr Buchanan shall pay to Bedford Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr Buchanan, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Louise Crosby

INSPECTOR