



Costs Decision

Site visit made on 13 February 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2025

Costs application in relation to Appeal Ref: APP/Z1510/W/24/3351702 Land Rear of 1-6 Dowches Cottages, Church Road, Kelvedon, CO5 9JE

- 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 Messrs J and D Smith (H P Smith & Sons) for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for development described as 'outline application for up to five dwellings with all matters reserved'.
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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. The PPG goes on to provide examples of unreasonable behaviour by local planning authorities, which include amongst other things failure to produce evidence to substantiate reasons for refusal, preventing or delaying development which should clearly be permitted and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. The costs application contends in summary that the Council failed to produce evidence to substantiate each of the reasons for refusal, failed to take account of the Arboricultural Report and made inaccurate assertions, with particular regard to the repetition in the Officer Report of wording which had also appeared in a report on an earlier application. Taking those factors into account, the appellant considers that the Council did not adequately consider relevant differences between the proposed development and the earlier proposal, and that the Council's decision prevented development which should clearly have been permitted.
4. In response to the appeal, the Council's letter dated 5 November 2024 confirms that its Statement of Case is set out in the Officer Report. Therefore, there was no need for the contents of the Officer Report to be repeated or for additional evidence to be provided on each reason for refusal. Although I have concluded that the appeal should be allowed, that does not, of itself, indicate that the Council's behaviour when handling the planning application was unreasonable.
5. My attention has been drawn to specific wording in the Officer Report which repeats that in an earlier report. The paragraphs in question refer in summary to narrow property frontages and a high proportion of hard surfaces. The wording is a

fair description of the proposal for five dwellings, based on the indicative site layout, so it was not unreasonable to re-use it, if the case officer had concluded that those issues had not been adequately resolved by the revised scheme. While I have reached the conclusion that a suitable layout for five dwellings could be achieved, the wording used was not vague, generalised or inaccurate and did not lead to an unsubstantiated conclusion.

6. The Officer Report refers explicitly to the Andrew Day Arboricultural Report and the accompanying Tree Protection Plan. Therefore it is clear that this arboricultural evidence was not overlooked or disregarded. While I have concluded that harm to the protected trees could be avoided or mitigated through the layout details and submission of suitable tree protection measures, that is a matter of judgement based on the arguments presented by both parties. It was not unreasonable for the Council to reach a different view.
7. The advice given by the Council's historic environment consultee highlighted relevant aspects of the significance and setting of the Conservation Area and the reasons for advising that harm would arise, in the absence of adequate evidence to the contrary. It is not clear whether additional heritage evidence was requested before the application was determined. However, while a proactive approach is encouraged, the Council is not precluded from proceeding with determination of the application on the basis of the evidence submitted. Again, while I have reached the view that the heritage issues can be addressed through the reserved matters, that is a matter of judgement based on the evidence before me and it was not unreasonable for the Council to reach a different view. Nor was it unreasonable for the Officer Report to repeat the heritage advice, provided it was consistent with the officer's own judgement, and there is no evidence that it was not.
8. Taking all the above factors into consideration, the Council's decision was substantiated in its Statement of Case. Even if the Officer Report had more explicitly considered the revisions to an earlier proposal, there is every likelihood that the outcome would have been the same. The report did acknowledge that the site was in a suitable location for housing in principle, while concluding that it was unacceptable for the reasons given. Those reasons were largely a matter of professional judgement and, notwithstanding the decision I have reached on the appeal, the Council's approach did not prevent or delay development which should 'clearly' have been permitted by them. Nor does the evidence indicate that the appeal could have been avoided.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Jane Smith

INSPECTOR