
Costs Decision

Site visit made on 6 February 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Costs application in relation to Appeal Ref: APP/V2255/W/24/3349633 Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN

- 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 Greg Wallis for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for is Change of use of agricultural land and conversion of a former poultry shed to form a single residential dwelling, to include associated external alterations, landscape, parking and ecological enhancements.
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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 states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant outlines that the Council's conclusions on character and appearance including the effect on the Kent Downs National Landscape (KDNL) include generalised assertions, and assumptions particularly in relation to future domestic paraphernalia.
5. Issues that relate to character and appearance often involve matters of judgement. I do not consider it unreasonable to identify that the change of use of agricultural land to land forming a residential curtilage, may in the future involve some domestic trappings on the land. Within the officer report the Council clearly identified the elements which they consider harmful to the character of the area and articulate their concerns. Whilst I have not agreed with the Council's analysis in relation to this refusal reason, they nonetheless produced clear reasoning related to the effect on the KDNL and the local character area backed up by reference to current planning policies. Consequently, they were not unreasonable in coming to that decision.
6. Similarly, the Council's statement of case sets out the reasons why the development was not acceptable and reached a conclusion that the change of use would be contrary to the requirements of Policy DM3 of Bearing Fruits 2031: The

Swale Borough Local Plan (2017). The Council clearly set out the justification for the reason for refusal and related the concerns to relevant development plan policies.

7. For these reasons, although I have reached a different conclusion on the marketing and viability of the site and the effect of the proposal, the Council had reasonable concerns to support its decision. Regardless of the exact wording of Policy DM3, I note that the Council found both the marketing and viability evidence submitted insufficient to demonstrate either that there was no demand for alternative uses, or that its use would be undesirable or unsuitable. Therefore, it seems to me that the appeal could not have been avoided, even in the event that the Council determined that only marketing, or viability evidence was required.
8. The applicant has asserted that there was a lack of co-operation from the Council. The submitted evidence indicates that discussions were held between the Council and the appellant relating to the information required within the marketing analysis. I appreciate that the National Planning Policy Framework (the Framework) advocates the use of the pre-application enquiry service. Nonetheless any advice provided by the Council in a pre-application stage is done so without prejudice.
9. In relation to the other permissions which are referenced by the applicant, I am unclear whether these were presented to the Planning Officer during the determination of the application. Regardless, the Council has sufficiently explained the differences between those sites and the planning balance process undertaken during their determination. I therefore do not find inconsistent decision making in this regard.
10. The applicant also suggests that as the Council could not demonstrate a five year housing land supply, as confirmed by other planning decisions issued at a similar time¹, the presumption in favour of sustainable development should have been triggered and planning permission should have been granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
11. The Council's officer report did identify that the Council could not demonstrate a five year housing land supply. As demonstrated in my appeal decision, I have reached a different conclusion to the Council concerning the effect of the proposed development on the KDNL. However, as the Council did identify harm to the KDNL in considering Framework Paragraph 11(d)(i) footnote 7, the policies in the Framework that protect areas and assets of particular importance, namely the KDNL, provided clear reasons for refusing the proposal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

B Pattison

INSPECTOR

¹ Appeal Ref: APP/V2255/W/22/3308462; and Council Ref: 21/503527/FULL