



Costs Decision

Site visit made on 12 March 2025

by **Les Greenwood MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Costs application in relation to Appeal Ref: APP/P4605/W/24/3355180

The Orchard, Land rear of 318-326 Brook Lane, Billesley, Birmingham B13 0TH

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Naseem Kausar for a full award of costs against Birmingham City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 2 detached (3 bedroom, double storey) self-build dwellings with associated landscaping and car parking to accommodate electric vehicles.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals and other planning proceedings normally meet their own expenses, but 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in such unnecessary or wasted expense.
3. The PPG states that a local planning authority may be at risk of a costs award if, amongst other things, it:
 - Prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - Refuses planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - Imposes a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations; or
 - Requires the appellant to enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework on planning conditions and obligations.

4. The claimant makes a number of points. Firstly, she argues that development of the site has been delayed unreasonably, since this is now the fifth application. Two of those previous applications were however dismissed at appeal¹, including most recently in February 2024, indicating that the Council's reasons for objection were justified. The Council failed to decide the appeal application within the statutory period, but I note that the proposal evolved during consideration of the application and the Council was attempting to resolve the key outstanding issue, regarding biodiversity.
5. The appellant refers to poor pre-application advice and communication. The pre-application advice in this case was given some years ago, however. The most recent appeal for development of this site was dismissed because of a lack of up to date information regarding biodiversity, so it was clear that this issue needed to be dealt with thoroughly in the current appeal application.
6. The coming into force of the Biodiversity Net Gain (BNG) small sites provisions of the Environment Act 2021 also affected the biodiversity issue. This was public information. The appellant submits that the Council only accepted that the proposal was exempt from BNG requirements, due to it being for self-build dwellings, at a late stage in the application process. The application was not, however, originally submitted as being for self-build dwellings. The Council's acknowledgement in this regard reasonably followed on from this change in the proposal. Its original validation requirement for the standard BNG metric appears to have been correct in the circumstances.
7. The appellant also states that the biodiversity requirements could have been dealt with by a unilateral undertaking or a condition rather than by a legal agreement as required by the Council. The appellant could have submitted a unilateral undertaking, but that would only have represented a different way to create a legal planning obligation for a financial contribution towards off-site biodiversity enhancement measures, to which the appellant objects. In the main appeal decision, I find that this matter can be dealt with by a condition instead of a planning obligation, as the reasonably required biodiversity enhancements should be capable of provision on-site. This was, however, a matter of judgement based on fact and degree. The Council's assessment, though different to mine, was reasonable in the circumstances – particularly so given the lack of any submission showing how biodiversity enhancements could be provided on-site.
8. Finally, the appellant also considers some of the conditions recommended by the Council's Ecology Officer to be unreasonable. In the main decision, I agree that some of those recommended ecological conditions are not necessary, but those were consultee recommendations only and were mostly not suggested as draft conditions by the Council in its appeal statement. The Council did not act unreasonably in this respect either.
9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Les Greenwood

INSPECTOR

¹ APP/P4605/W/22/3299527 and APP/P4605/W/23/3328540.