



Costs Decision

Site visit made on 18 March 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Costs application in relation to Appeal Ref: APP/V2255/W/24/3351745

School Lane Farm, School Lane, Iwade, Kent ME9 8SG

- 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 Dean Gibbard for a full award of costs against Swale Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for demolition of agricultural building and erection of one self-build dwelling with associated landscaping.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and that behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG lists examples of the type of behaviour which may give rise to a substantive award of costs against a local planning authority. This includes imposing a condition that is not necessary and reasonable, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligation.
4. The application is seeking to recover the full costs incurred in the appeal process. The applicant considers that the Council behaved unreasonably as it imposed without justification a condition which the Secretary of State had already deemed to be unreasonable and unnecessary on account of its lack of policy basis.
5. The Council considers that condition 4 is justified as it has declared a Climate and Ecological Emergency which commits it to several actions to reduce carbon emissions, including an aim to make the borough carbon neutral by 2030. This was found to be a material consideration by an Inspector considering an appeal at Minster-on-sea¹. Nevertheless, even though a condition was imposed to address carbon emissions in that case, the Inspector found that the condition suggested by the Council was not supported by local policies.
6. In correspondence on the planning application, the Council directed the applicant to its guidance on the climate change planning condition to justify why it sought to impose the condition. An email from the applicant's agent on 4 September 2024 indicated that he was happy to agree to the Council imposing the condition in order

¹ Appeal Ref: APP/V2255/W/19/3238171

that the decision could be issued. However, this also outlined that he considered it to be unreasonable behaviour and as such he stated that he would be appealing the condition and advising his client to recover the costs of making the appeal.

7. Condition 4 goes beyond the requirements of Policy DM19 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017. As can be seen from my appeal decision, I have found it is not necessary and reasonable to impose it.
8. Therefore, I conclude that by imposing a condition that was not necessary and reasonable, the Council's behaviour has been unreasonable. It thus follows that the applicant has incurred unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Costs Order

9. 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 Swale Borough Council shall pay to Mr Dean Gibbard, 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.
10. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Wright

INSPECTOR