



Costs Decision

Site visit made on 24 APRIL 2025

by **Terrence Kemmann-Lane JP DipTP FRTPI MCMI**

an Inspector appointed by the Secretary of State

Decision date: 09 May 2025.

Costs application in relation to Appeal Ref: APP/D1590/W/23/3331464

7 - 9 Landsdown Avenue, Leigh-on-Sea, SS9 1LJ

- 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 Mr G Hutchinson for a full award of costs against Southend-on-Sea City Council.
 - The appeal was against the refusal of the Council to grant an application under Section 73 of the Town and Country Planning Act 1990 to allow development without complying with a condition subject to which planning permission had been granted.
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Decision

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

Reasons

2. 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 application

3. The council's refusal is manifestly unreasonable having regard to the reason for refusal itself, and the content of the officer's report. This is development which should clearly be permitted, having regard to the development plan, national policy, and other material considerations. A full award of costs is therefore justified in accordance with the PPG.
4. The council have described the harm caused by the appeal scheme as "incongruous and out of character in this respect causing significant harm to the character and appearance of the site, the streetscene and wider area", yet they found the previous 2019 scheme, which is broadly in line with the current scheme, to be "acceptable". The true test of acceptability is to see to what extent the current appeal development has diverted from that permission, and to what extent harm thereby arises. It is clear from the officer's report that the council has applied the wrong test in assessing the planning application.
5. The council has overplayed the harm to the character and appearance of the area, taking a one-eyed view of the streetscene. The officer's report does not undertake a real or true assessment of the character and appearance of the area, which in reality is relatively varied. The development contains a number of features that are present in the streetscene and the officer's report is silent on this. Even if the

streetscene was uniform, which it is not, the level of 'protection' offered by the council to the character and appearance of the area, is more akin to that appropriate to a conservation area. This extreme approach in a traditional, whilst attractive, residential setting is unreasonable.

6. The officer's report misquotes the 2019 officer's report and this would misdirect the reader. The 2019 permission considered that the design was acceptable in its own rights. However, if the development was to be fully integrated then some decoration would be beneficial. This is very different to what the case officer stated within the report as part of this application. A total misdirection and statement such as this is unreasonable.
7. Furthermore, the council is unable to demonstrate a five-year housing land supply, and the tilted balance applies for the purpose of determining:
 - (a) Whether the proposal is in accordance with the development plan,
 - (b) Whether the proposal complies with National Planning Policy Framework (NPPF) paragraph 11, and
 - (c) Whether permission should therefore be granted.Whilst the planning application is under s73 of the Town and Country Planning Act (1990) (as amended) at the heart of the submission are two new dwellings. Therefore permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (the so-called 'tilted balance'). No rational reason was given as to how, applying the correct tilted balance, minor changes to the appearance of the two dwellings can significantly and demonstrably outweigh the benefits of the scheme.
8. Taking all of the above into account, it is wholly unclear why the council resisted the scheme on the basis of its impact on the character and appearance of the area, and therefore it should have been permitted as no substantiated grounds of refusal have been cited. This amounts to unreasonable behaviour which has resulted in the appellant incurring unnecessary costs in pursuing the appeal.

The rebuttal

9. The appellant has put forward a number of grounds of unreasonable behaviour which will be dealt with in turn:
 - i) the council has overplayed the harm to the character and appearance of the area, with the officer's report not undertaking a real or true assessment of the character and appearance of the area:

The council is content that the appraisals made by officers have been consistent in the assessment of the character of the area and the importance of detailing for the successful integration of this project within the context of the existing development, importantly the adjoining terrace. The various reports succinctly and proportionately address the relevant matters. The appellant may want the requirement for detailing to be removed now as it is no longer convenient to implement, but whichever way the appeal is decided, this is not evidence that the council's decision-taking was flawed.
 - ii) the officer's report 'mis-quotes' the 2019 officer's report, resulting in misdirection

of the reader such that that the council has been inconsistent in its decision making:

No procedural concerns are raised by the appellant's agent. The issues are instead taken with the planning officer's professional assessment which was made in good faith and with due regard to the content of the initial assessment conducted under the main 2019 approval to ensure consistent decision making. Of relevance is paragraph 7.15 of the officer's report for 19/01305/FUL (the 2019 permission) (see appendix 3 of the appellant's Statement of Case) which made specific reference to the importance of the bay and window detailing to the success of the proposal in the context of the immediate streetscene.

iii) the LPA is unable to demonstrate a 5-year housing land supply and that the tilted balance should be engaged:

The application under consideration was submitted under s73 and is in essence an application to regularise the change in the design of the approved development. The dwellings approved under the 2019 permission, as amended by the 19/01752/AMDT decision, have been delivered on the site, so this point is considered misconceived. The dwellings at the site will remain regardless of their detailed design and the outcome of this appeal. There is no harmful impact on housing provision.

10. The PPG refers to the general principles for awards of costs for unreasonable behaviour in appeals and other planning proceedings. The test for an award of costs is 'unreasonable behaviour' and examples are set out in the PPG. The meaning of unreasonable is derived from *Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774*. The council's behaviour has been reasonable in all respects. It has not resulted in the appellant incurring any unnecessary costs as the appeal process is within the appellant's rights in order to challenge the council's well-founded decision. Therefore the application for an award of costs on all of the grounds cited should be refused.

Decision

11. From my separate decision on the appeal, it is clear that I have found that the officer's report and the decision to refuse the s73 application was justified. In brief, the front elevations of the houses as built are harmful to the character and appearance of the 2 houses and the streetscene and cogent reasons for reaching that decision are given.
12. As to the point, set out in paragraph 6 above, suggesting that the officer's report miss quotes the 2019 officer's report and this would misdirect the reader, I consider that this is a misreading of this element of the report. The 2019 permission was given on the basis that the scheme was generally acceptable, but condition 2 was imposed to overcome detailed shortcomings. This is an appropriate course to take, by using a condition where otherwise a refusal of permission might be the outcome. Whether the expression of this in the report was absolutely clear is a matter for any individual reader, but I regard it as being entirely comprehensible.
13. The appellant's claim based on paragraph 11 d) ii of the NPPF is misguided. The appeal was not about whether 2 houses should be given planning permission or not. Whether the council had granted the S73 application or not, the housing land supply would be totally unaffected.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and that an award of costs is not justified.

Terrence Kemmann-Lane

INSPECTOR