



Costs Decision

Site visit made on 10 June 2025

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2025.

Costs application in relation to Appeal Ref: APP/U3935/W/25/3362322

25 Wharf Road, Wroughton, Swindon SN4 9LF

- 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 William Evans for a full award of costs against Swindon Borough Council.
 - The appeal was against the refusal of planning permission for erection of a 3 bedroom dwelling and associated parking provision.
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Decision

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

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 applicant states that the Council behaved unreasonably by failing to take into consideration a material consideration in the form of a nearby appeal decision¹. It is also stated that the Council applied the tilted balance incorrectly and applied the incorrect regulations in relation to Biodiversity Net Gain (BNG).
3. The applicant made reference to a nearby appeal decision within his application which is not referenced within the Council's Officer report. The Council nonetheless presented a well-reasoned and suitably substantiated case in support of their decision, including a detailed assessment as to how they considered the proposal would result in harm to the character and appearance of the area. Given this, there is no suggestion that the consideration of this appeal decision would have led to a different outcome. Therefore, whilst it would have been useful for the Council to refer to this appeal decision, I do not consider that this amounts to unreasonable behaviour.
4. Paragraph 11d of the National Planning Policy Framework (the Framework) refers to the implications for decision making where the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites, stating "where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable

¹ APP/U3935/W/23/3314790

- locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”
5. The Council acknowledges that it is unable to demonstrate a 5-year supply of deliverable housing sites and there is no suggestion that the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Given this, the tilted balance set out in Paragraph 11dii is engaged, and it is necessary to consider whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
 6. The Council undergo an assessment of whether the benefits of the proposal would outweigh its identified harms under the report section titled ‘planning balance and conclusion’. Thus, whilst stating that the tilted balance is not engaged, I am satisfied that a planning balance of the harms and benefits of the proposal, as required by Paragraph 11dii was carried out.
 7. However, as part of this planning balance, the officer report states that highway safety weighs against the proposal, despite it not forming a reason for refusal and the officer report not identifying any harmful impacts in this regard. Given this, whilst the benefits of the scheme were identified as part of the planning balance, it appears that the Council’s conclusion that the benefits would not outweigh the harms was based on the assumption that highway safety was a harmful impact. Therefore, I cannot be satisfied that the Council’s conclusion was drawn taking into consideration all the matters to be weighed in the planning balance. This constitutes unreasonable behaviour. However, I have not been presented with any evidence of substantive work undertaken preparing a case in respect of the Council’s application of the planning balance, and therefore wasted expense has not been demonstrated.
 8. BNG is required under Schedule 7A of the Town and Country Planning Act 1990 (the Act) which sets out an objective for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. Dwellings that are self-build or custom housebuilding as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015 are exempt from the provision of BNG. The applicant states that, as a self-build development, the proposal is exempt from the provision of BNG, and thus the Council’s third reason for refusal, in relation to biodiversity net gain, applies the regulations incorrectly.
 9. However, in order to qualify for the BNG exemption, there must be an effective mechanism through which the dwelling could be secured as a self-build property. No planning obligation was submitted in support of the proposal, and thus there is no appropriate mechanism secure the development as a self-build dwelling. Given this, the proposal would be required to make provision for BNG. Therefore, there is no evidence that the Council incorrectly applied the regulations in relation to BNG.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

N Robinson

INSPECTOR