
Costs Decision

Site visit made on 24 April 2025

by **K Williams MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th July 2025

Costs application in relation to Appeal Ref: APP/L2630/W/24/3351811 Land west of Town Farm, Pound Lane, Ditchingham, Norfolk, NR35 2DN

- 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 Stephen Byard for a partial or full award of costs against South Norfolk District Council.
 - The appeal was against the refusal of planning permission for development.
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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. Unreasonable behaviour can be procedural or substantive, relating to process or issues arising from the merits of the appeal. The appellant alleges that the Council acted unreasonably by acting contrary to, or not following, well-established case law. The PPG¹ cites this as an example of unreasonable behaviour where a substantive award of costs may arise.
4. The core of the alleged unreasonable behaviour is the Council's interpretation of "isolation" for the purposes of National Planning Policy Framework (the Framework) paragraph 84 e). The appellant claims that the Council's findings that the site was not isolated directly led to the two reasons for refusal. The first reason explicitly cited proximity to other dwellings as the basis for not being isolated and did not refer to development plan policies. However, the second reason for refusal was considered against Policy DM1.3 of the South Norfolk Local Plan.
5. The appellant submitted information to the Council before the planning application was determined, advising of the case law and how it applied to the appeal site. This was included in a pre-application support statement, an email with a supplement on isolation, the planning statement and a presentation at the Planning Committee.
6. However, the Council's interpretation of isolation, particularly its emphasis on proximity to other dwellings, rather than remoteness from a settlement, stems from the consideration of two appeal decisions². Notwithstanding the appellant argues

¹ Paragraph: 049 Reference ID: 16-049-20140306.

² APP/F2605/W/22/329089 and APP/L2630/W/22/3302776.

that the appeal decisions are inconsistent with the Court of Appeal Judgments³, and appeal decisions are not established case-law for the purposes of the PPG, nevertheless they are material considerations.

7. As can be seen from my decision I have considered in this context that isolated should be considered as outside a settlement. However, I also exercised some assessment of the physical and contextual relationship of the site from individual dwellings, particularly as a settlement is not defined within the Framework, and this requires a planning judgement.
8. I acknowledge that the Council has relied heavily on the appeal decisions. It has also not fully explained why more recent judgments should be discounted. Such reliance on the appeal decisions somewhat detracts from their position, as whether those sites were isolated are not particularly elaborated on to the same extent as this case and the circumstances of those appeals are very different.
9. Nonetheless, even if I were to conclude that there was some unreasonable behaviour by their interpretation of isolation at the time of making their decision, they also found the location of the site was unsuitable. This formed part of the second reason for refusal and I find that their planning judgement on this matter to be sound.
10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that applications for planning permissions should be determined in accordance with the development plan unless material considerations indicate otherwise. Due to the Council's undisputed lack of a five-year housing land supply, in this case any adverse impacts are required to significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole in accordance with Framework paragraph 11 d ii).
11. Setting aside the subsequent issue regarding protected species, had the Council concluded that the proposal was isolated in terms of the requirements of Framework Paragraph 84 e) potentially this may have been afforded more weight in final overall planning balance.
12. However, the weighting of material considerations, is always a matter for the decision-taker depending on the facts of the case at hand and is a matter of planning judgement. I cannot be certain that the outcome of the application would have been different. Furthermore, the Council did engage with this matter within the officer report and addressed the relevant case-law. Consequently, these matters, taken together lead me to the view that it has not been demonstrated that planning permission would not have still been refused and thus an appeal prevented.
13. Therefore, I conclude unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

K Williams

INSPECTOR

³ Braintree DC v SCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610 and City and Country Bramshill Ltd v SSHCLG, Hart DC and other [2021] EWCA Civ 320.