



Costs Decision

Site visit made on 2 July 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2025

Costs application in relation to Appeal Ref: APP/V2255/W/24/3356302

Ivy Pham House, 123 Marine Parade, Sheerness ME12 2BX

- 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 Miss Ivy Van for an award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for Erection of three-bedroom detached dwelling and associated amenities.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (the PPG) advise that, irrespective of the outcome of an appeal, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. Paragraph 16-049-20140306 of the PPG states that authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes preventing development which should clearly be permitted, and not determining similar cases in a consistent manner.
4. The appellant considers the Council has behaved unreasonably because of the length of time it took to determine the application which was clearly similar to the dwelling approved on the appeal site, and based upon that permitted scheme, the appellant had no reason to believe the appeal application would be refused. During the determination period the permission lapsed. However, the Council refused the application based upon the same policies for flood risk and highway matters under which the previous scheme was found acceptable, effectively introducing new reasons for refusal.
5. From what is before me, the application was not determined until around 18 months after its submission. The full timeline of events during the determination period and content of correspondence is unclear. However, I have noted the amended plans and various consultation responses from the Highway Authority (HA), suggesting discussions took place on highway matters to resolve some of the reasons for HA objections. Though this was not ultimately possible in respect of vehicle visibility.
6. If a Local Planning Authority does not determine similar cases in a consistent manner, then it should have clear reasons for doing so. In respect of the access,

the change in its location and land forming part of a splay no longer being in the same ownership as the appeal site, are material changes to the situation from when the previous application was assessed. For reasons set out in my decision letter, I cannot be satisfied this proposal would not be prejudicial to highway operation and safety. Therefore, the Council has not behaved unreasonably in respect of highway matters.

7. In respect of flood risk, there have been no material changes in circumstance to the appeal site situation. The Council cites an appeal decision letter¹ as a material consideration that post-dates the previous permission, justifying a departure from that decision in respect of the approach to flood risk policies. Though that decision is over 3 years old, key aspects of the policies cited and referred to by the Council are carried into the latest iteration of the National Planning Policy Framework.
8. The reason the Council refused the application are fundamental matters of national and development plan policy that need to be appropriately addressed and/or balanced in the determination of any application. As set out in my decision letter the matter of the sequential approach has not been satisfactorily addressed, and there are not matters advanced that outweigh it, so the Council has not behaved unreasonably in respect of its overall decision on this matter.
9. The appellant implies they were not aware of the Council's flood risk concerns for some time, and the appellant has provided a copy of an email sent by the Council in May 2024 expressing concerns in respect of flood risk. Were this to have been the first time the appellant was made aware of the Council's concerns, it might be well arguable that this constitutes unreasonable behaviour.
10. I have sympathy that the appellant's permission has lapsed during the Council's determination of the appeal application. However, it was within the appellant's gift to appeal against the non-determination of the appeal application after the statutory period expired. Moreover, even were an appeal to have lodged then it would seem highly likely the matter of flood risk would need to have been addressed, as well as highways matters and the Conservation of Habitats and Species Regulations 2017. Therefore, as these matters would have needed to have been appropriately addressed, I cannot conclude there has been unnecessary or wasted expense incurred by the appellant in the appeal process.

Conclusion

11. Therefore, for the reasons set out above, unreasonable behaviour that has resulted in unnecessary or wasted expense in the appeal process, has not been demonstrated, so an award of costs is not warranted.

Mr D Szymanski

INSPECTOR

¹ Ref. APP/V2255/W/21/3277228.