
Costs Decision

Site visit made on 4 July 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Costs application in relation to Appeal Ref: APP/U2235/W/25/3362151

Gaskin Valley Farm, Lenham Road, Fairbourne Heath, Kent ME17 1NA

- 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 S King of Knowle Game Farm for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for a permanent agricultural workers dwelling to serve the essential needs of the holding.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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. The applicant says the Council acted unreasonably in both procedural and substantive grounds. Examples in the PPG of behaviour that may give rise to a procedural award of costs includes where there has been a lack of co-operation between the local planning authority and the applicant, and the withdrawal of any reason for refusal.
4. Behaviour that may give rise to a substantive award of costs includes where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis; not determining similar cases in a consistent manner; and not reviewing their case promptly following the lodging of an appeal against refusal of planning permission.

Second refusal reason

5. Whether or not there is an essential need for a full-time worker to live at the appeal site is a matter of planning judgement based on the evidence before the decision maker. In this instance and in refusing planning permission, the Council departed from the advice of its appointed Agricultural Advisor (AA), who advised that an essential need existed for a full-time worker to live at the appeal site.

6. The Council's departure from the AA's advice was not adequately substantiated and it subsequently withdrew its second refusal reason following the lodging of the appeal. In essence the Council departed from the AA's advice during the determination of the planning application and then changed its stance at the appeal stage to reflect that same advice. This was despite there being no material change in circumstances in respect of the evidence submitted on essential need in the intervening period between the determination of the planning application and the lodging of the appeal.
7. In those circumstances, the withdrawal of the second refusal reason amounts to unreasonable behaviour by the Council within the terms of the PPG set out above, and it put the applicant to unnecessary wasted expense in making further submissions at the appeal stage to challenge that refusal reason.

First refusal reason

8. Matters relating to the effect of a proposal on the character and appearance of an area involve the exercise of planning judgement based on factors including the evidence placed before the decision maker, and their experiences of a site within its surroundings. The Council's decision notice and officer report clearly explained why, in the exercise of its planning judgement, the proposed development would be detrimental to the character and appearance of the area.
9. The judgement it made in refusing planning permission, supported by the evidence presented at the time, was adequately substantiated with reference to applicable development plan policies, guidance, and the policies in the National Planning Policy Framework ("the Framework"), and was not unreasonable.
10. The Council's decision to withdraw the first refusal reason shortly after the lodging of the appeal was adequately justified on the submission of new evidence in the Landscape and Visual Appraisal (LVA), which was not available to the Council during the determination of the planning application. It is relevant that I have also found the appeal proposal to be harmful to the character and appearance of the area, albeit I have judged that the proposal would, on the basis of the LVA, result in visual harm at a lower level to that identified by the Council.
11. The applicant's position is that had the Council asked for a Landscape and Visual Impact Assessment (LVIA) it would have provided one and therefore the refusal reason could have been avoided. I am directed to an email from the applicant's agent to the Council's Case Officer dated 20 September 2024, which sought a discussion to ascertain if they had everything they needed and whether they required any comments in response to consultations received. That email seems to have gone unanswered and the decision to refuse the application was made on the target date around a week later.
12. There is nothing before me to indicate that the applicant offered to submit a LVIA during the determination of the planning application or that the Council declined such an offer as part of a lack of cooperation. Whilst the Council's policies indicate that a LVIA can be appropriate in certain circumstances, they are expressed in broad terms and appear to be case specific. To my mind those policies placed no obligation upon the Council to request a LVIA in this instance and no obligation on the applicant to supply one.

13. It seems to me that at the time of refusing planning permission the Council could not have predicted that the submission of a LVIA would overcome the concerns it had with respect to the proposal's visual effects. Having based its assessment on the evidence before it and mindful of the Framework's encouragement for decisions to be made as quickly as possible and within statutory timescales, there was no compulsion for the Council to negotiate with the applicant or to request more information. I am not aware of any binding obligation upon the Council to engage in discussions with applicants during the consideration of a planning application or to seek additional information in all instances.
14. In those circumstances and taking all the above into account, the Council adequately substantiated its first refusal reason through an objective analysis of the proposed development's effects. The subsequent withdrawal of that reason at the appeal stage was justified by the submission of new evidence in the LVA. Consequently, in respect of the first refusal reason, I find that the Council's behaviour was reasonable within the terms expressed by the PPG.

Conclusion

15. The Council's behaviour in respect of the first refusal reason was reasonable and therefore this is not a case where the planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council's prompt review of its case following the lodging of the appeal also avoided the need to hold an appeal hearing event and the expense that would have incurred. However, for the reasons given above, unreasonable behaviour on the part of the Council resulting in unnecessary and wasted expense has occurred in respect of the second refusal reason, and on that basis a partial award of costs is warranted.

Costs Order

16. 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 Maidstone Borough Council shall pay to Mr S King of Knowle Game Farm, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the essential need for a full-time worker to live at the appeal site under the second refusal reason; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Maidstone 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.

G Sylvester

INSPECTOR