



Costs Decision

Site visit made on 10 September 2025

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th September 2025

Costs application in relation to Appeal Ref: APP/M1520/W/25/3366291 Corner Club, 149-151 High Street, Canvey Island, SS8 7RQ

- 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 Lee Petch for a full award of costs against Castle Point Borough Council.
 - The appeal was against the refusal of planning permission for an upwards development to create 3 no. flats.
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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 (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 suitability of the appeal building to withstand the force of water during a flood event is a legitimate concern since it would provide future occupiers with a safe refuge at first floor level. The PPG on *Flood risk and coastal change* mentions the structural safety of buildings as an aspect of the exception test. The absence of supporting information to show that the structure could withstand pressure from flood water was the Council's sole objection. However, rather than raise the matter with the applicant in order to provide an opportunity to address it, the application was refused for this reason alone.
4. As the Council points out, it is under pressure to determine applications. Indeed, the National Planning Policy Framework says that decisions should be made as quickly as possible and within statutory timescales, unless a longer time period has been agreed in writing. However, paragraph 39 of the Framework expects local planning authorities to approach decisions on proposed development in a positive way. They should work proactively with applicants to improve the economic, social and environmental conditions of the area. The failure to do this was unreasonable for a number of reasons.
5. Firstly, this was a scheme that was acceptable in all other respects and at a site where there was an extant permission for a similar development following the 2023 appeal decision. Allied to this, the Council is unable to identify five years' worth of housing land supply and will be unable to do so going forward, according to the Monitoring Report for 2022-2024. Given the planning history and the imperative to significantly boost the supply of homes, solutions to the potential issue should have been explored.

6. There is no mention of flooding issues in the 2023 appeal decision. The Environment Agency drew attention to the matter in its letter of 30 August 2022 in relation to the 2024 appeal scheme. However, it is not clear that the structural condition of the existing building was raised by the Council at the time. That Inspector did not need to consider the sequential and exception tests as they did not affect the outcome of the appeal but there is no indication that the application was refused on flooding grounds. The PPG warns that local planning authorities are at risk of an award of costs against them if they do not determine similar cases in a consistent manner. The Council did not do this as it introduced an objection that equally would have affected the two earlier proposals.
7. Furthermore, the Council permitted a second floor extension to create a two bedroom flat on the seafront at Eastern Esplanade in 2025. Details about whether the existing building is structurally sound and able to withstand the force of water inundation were not originally submitted but were requested as part of the application process. The Council has not explained why that approach was taken in that case but not as part of the appeal application. On the face of it this is another aspect of inconsistency.
8. The Council has not contested the technical evidence provided as part of the appeal. However, the reason for refusal contains no suggestion that the Corner Club building would be particularly vulnerable to damage by flood water. Given that flooding is an issue that affects the whole of Canvey Island, the Council is likely to be aware of the types of buildings which run the risk of being swept away. Evidence about the likely form of any flooding had also been provided which gave details of its anticipated depth if the sea defences were breached. Whilst receiving some surety at application stage would have been advisable, the information provided should have indicated to the Council that this matter would be unlikely to form an insuperable objection.
9. Seeking further evidence from the applicant would have taken time but would have allowed a positive outcome to be achieved more quickly than it has done. In all the circumstances this is the approach that it would have been reasonable to take. At the very least the matter could have been ventilated and the length of time that a structural assessment would take to prepare discussed. The Council's actions did not follow those advocated by the Framework. It is no answer to suggest that the applicant had the option of submitting a further application as the Council is expected to behave reasonably in determining the application before it.
10. It will not always be the case that local planning authorities should request further information before determining an application but they should, in general terms, be looking for solutions. Owing to all the factors set out above and particularly given the aim to deliver a sufficient supply of homes, there is a stark mismatch between the way the Council dealt with the application and the Government's stated approach for decision-making. If it had followed this then the appeal could have been avoided.
11. Therefore, for the reasons given, unreasonable behaviour resulting in unnecessary expense has occurred and a full award of costs is warranted.

Costs Order

12. 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 Castle Point Borough Council shall pay to Lee Petch, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Castle Point 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.

David Smith

INSPECTOR