
Costs Decision

Hearing held on 29 April 2025

Site visits made on 29 April and 15 May 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2025

Costs application in relation to Appeal Ref: APP/F1040/W/25/3358723

97 Hartshorne Road, Woodville, Swadlincote, Derbyshire DE11 7HY

- 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 Stonebond Properties (Solihull) Limited for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 54 dwellings, public open space, landscaping, access, and associated works.
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Decision

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

The Submission for Stonebond Properties (Solihull) Limited

2. An application for costs was made in writing prior to the Hearing. The basis of the applicant's costs claim is that the Council's decision was based on vague and unsubstantiated assertions resulting in the delay of development that should have been permitted. It is suggested that in respect of the biodiversity reason for refusal contained within the Council's decision notice, that the alleged harm could have been addressed through the imposition of appropriate conditions. At the Hearing the applicant suggested that the reasons for refusal were subjective and without objective analysis.

The Response by South Derbyshire District Council

3. The Council's rebuttal was submitted in writing in advance of the Hearing. It suggests that the Planning Committee was entitled to weigh technical evidence and site-specific representations to reach its decision and that it has provided a full and coherent statement of case setting out its planning judgement. It contends that its reasons for refusal are clear, reasoned and reasonable.

Reasons

4. 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.
5. The planning application was recommended for approval by the planning officer but it was subsequently refused by the planning committee at its meeting on 20 August 2024. A planning committee is not duty bound to follow the recommendation of its officers but it must substantiate its position and avoid vague, generalised or

inaccurate assertions which are unsupported by any objective analysis. It has been put to me that the Council considered the evidence in the round including technical evidence, observations made during a site visit and interested party representations. However, whilst I have been supplied with the minutes of the committee meeting, they are very limited and do not provide significant detail as to how the decision was arrived at.

6. The Council's decision notice provides a single reason for refusal relating to 2 substantive matters, namely the effect on the character and appearance of the area and biodiversity. The reason for refusal references the local planning policies that the proposal was considered to contravene. The Council's statement of case explains the reason for refusal in more detail. Although this is a relatively concise document that does not in itself imply that the committee's decision has not been substantiated.
7. Whether or not the appeal site is located within the highest tier of the Council's settlement hierarchy with proven accessibility credentials, it does not override the need to consider the effect on the character and appearance of the area. Following the applicant's viewpoint that the reason cannot be divorced from the principle of development would suggest that if the principle is acceptable due to its type and location, the specific design, layout and appearance of the scheme is irrelevant. That is clearly not the case in the South Derbyshire development plan. I am satisfied that the effect of a development on the character and appearance of the area is a matter of planning judgement that applies regardless of the location of the appeal site. I have drawn my own conclusions on this matter having reference to the evidence of the main parties as well as local residents.
8. Whilst I have not concluded that the harm arising would be substantial as suggested by the Council, in my decision I have found that the proposed development would have a harmful effect on the character and appearance of the area. I am satisfied that the Council's evidence was sufficient to justify its position in relation to this matter.
9. Turning to matters of biodiversity, the Council is very clear that it does not dispute the contents of the applicant's ecological appraisal and surveys and that it considers them to be technically correct. It seems to me from the evidence presented that even if significant harm to biodiversity was identified by the Council, Policy BNE3 of the South Derbyshire Local Plan; Part 2, would not preclude the development from proceeding, providing that it was offset by sufficient mitigation/compensation measures. The policy does not identify where such measures should be located. Whilst national guidance seeks to prioritise mitigation on-site, it does not preclude off-site mitigation.
10. There were no formal objections to the proposal from statutory or other consultees in respect of biodiversity and the Council has not supplied any technical or other compelling evidence to demonstrate why it considered insufficient mitigation had been proposed on-site. Nor did it explain what it would have considered appropriate on-site mitigation. The applicant's ecological appeal statement has clearly set out the approach to mitigation based on the identified value and condition of the various habitats within the appeal site and the Council has not suggested that the approach is flawed. No substantive evidence has been put forward to counter the expert opinion in the applicant's ecological reports or to demonstrate how on-site mitigation has not been maximised in accordance with the mitigation hierarchy.

11. Furthermore, I am concerned that the Council suggests that off-site BNG should be provided locally to where an impact is exerted. This is different to the requirement for on-site mitigation to be prioritised. There is no provision within Policy BNE3 for off-site mitigation to be provided within a threshold distance. It is similarly the case in national policy and guidance. In my decision I have found that the proposal would comply with the local plan in respect of the provision of biodiversity mitigation. I find the Council has made vague and inaccurate assertions with regard to this matter which are unsupported by any objective analysis.
12. An appeal may not have been avoided in its entirety given the matters pertaining to character and appearance, but the applicant has nonetheless incurred costs in defending its position with regard to the biodiversity implications of the proposal.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified in relation to matters regarding biodiversity mitigation.

Costs Order [where awarding costs]

14. 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 South Derbyshire District Council shall pay to Stonebond Properties (Solihull) Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending issues regarding biodiversity mitigation only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to South Derbyshire District 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.

M Clowes

INSPECTOR