



Costs Decision

Site visit made on 7 October 2025

by **Jonathan Price BA(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 October 2025

Costs application in relation to Appeal Ref: APP/W0530/W/25/3370713 Driftwood, Hale Road, Swavesey, Cambridgeshire CB24 4QP

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Gary Fleming for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal by the Council of planning permission for change of use of land and buildings to residential curtilage/residential use.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses but that 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. Awards against a local planning authority may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The case made in this costs application relates mainly to substantive matters.
3. I note that prior to a decision on the application it was discussed at a case management meeting with senior officers and managers. Following this, a number of key points were highlighted to the applicant. The Council advised that, due to historical planning conditions which tie the use of the commercial land to the owner of the dwelling at Driftwood, the proposed change of use of the land from commercial to residential amenity land was considered acceptable in principle. In this instance, the Council accepted the marketing requirement of Policy E/14 of the South Cambridgeshire Local Plan (LP) would not apply.
4. However, the Council also advised that, given the site's location within the open countryside, it was highly likely that permitted development rights would be removed to prevent the proliferation of built form in this rural setting, should a change of use be allowed. The Council cautioned that, due to the historic use and significant scale, the two commercial buildings cannot be considered residential in nature, nor are they ancillary or subordinate to the main dwelling. As such, the Council advised that proposed conversion of these buildings to residential use could not be supported. Should the applicant wish to proceed with the change of use to residential land, the Council further advised that the outbuildings would need to be demolished and that, due to their size, this would require planning permission.

5. In light of this advice, the Council invited the applicant to withdraw the current application and resubmit a revised proposal with the revised description of *“Demolition of commercial buildings and change of use of land to residential/curtilage use”*. It was further asked that a Preliminary Ecological Appraisal (PEA) be submitted as part of the demolition proposal for the two buildings with any further surveys found necessary submitted with the revised application.
6. The application was not subsequently withdrawn and the subsequent refusal was therefore based on the application originally made and which was the subject of a successful appeal.
7. The conflict found by the Council over the proposal lying outside the development framework for Swavesey related to the period after the original bungalow had been demolished and construction of the replacement dwelling had not begun. The harm found was predicated on the proposal thus being a standalone residential use contrary to LP Policy S/7. This was despite the red line in the application including the site of the previous dwelling at Driftwood and the outbuildings and the planning application form confirming that the proposal did not include the gain, loss or change of use of residential units. The statement accompanying the application clearly says that the proposed change of use of the land and outbuildings to residential use/ curtilage was to be in conjunction with the approved replacement dwelling. The Council has therefore not adequately substantiated the conflict found with policy in this regard, or how any harm came about as a consequence.
8. Despite relaxing its marketing requirements, the Council had still found conflict with LP Policy E/14. This was based on the lack of efforts to make the outbuildings suitable for a commercial use, such as by seeking the removal of the condition the Council had consistently found necessary in previous applications which tied this to the dwelling at Driftwood. This seems to me an entirely unreasonable requirement and inadequate justification for a finding of conflict with LP Policy E/14.
9. The application was for a change of use, with the planning statement explaining that the property had been bought due to the existence of the buildings and the copious amount of space therein, which were intended to be used in connection with the main residential dwelling, for residential and vehicular storage. There is nothing to suggest the outbuildings were to be physically converted to residential use. Having accepted there to be no need for prior marketing for an employment use, the absence of any proposed operational development means the further criteria of Policy H/17 in respect of structural suitability and appearance are not applicable. The outbuildings exist and the proposal is for a domestic rather than a commercial use. There is no reasonable basis for the Council not considering these ancillary or subordinate to the main residential use, as applied for. It is only the change of use of these buildings that was sought and, on this basis, the Council had not shown how this would have an adverse effect upon the character and appearance of the area or be of an unsuitable design quality. Therefore, the conflict found with LP policies NH/2 and HQ/1 in respect of such matters seems to me entirely misplaced and unreasonable.
10. The planning application form advised that the Biodiversity Net Gain (BNG) de minimis exception was considered to apply, as the proposal was for change of use only. The Council not only assumed physical changes to the site but that the proposal involved the residential conversion of the outbuildings, seeking a fresh

application with these to be demolished and requiring a PEA and, at the same time, altering the circumstances for the BNG de minimis exemption prevailing with the original proposal. The Council appears to have engineered a requirement for BNG that the submitted proposal did not justify. This is substantively unreasonable.

11. The Council also appear to have vacillated over the question of the planning unit, and whether the proposed change of use relates to the same or a separate one to the dwelling. From its costs rebuttal, it appears the Council has accepted the site is a single planning unit comprising a mixed residential and commercial use. The planning history points unequivocally to this being the case. In such a context, the proposal appears to me to seek to change such a mixed use to a single, residential one. On this basis, the Council's decision fails to substantiate any harm arising from this, related to the various LP policy conflicts cited. Even assuming the dwelling and the commercial buildings comprise two separate planning units, I fail to see how this alters the considerations over the suitability of the change of use proposed, which would effectively create a single, residential planning unit.
12. The PPG provides examples of the types of behaviour which may give rise to a substantive costs award against the Council¹. Based on the preceding considerations, and the conclusions in the appeal decision, there is a reasonable basis to the Council having prevented a change of use which should clearly have been allowed, based on both its accordance with the LP and the material considerations that apply. The Council's decision reasons were not adequately substantiated, with rather contrived and unconvincing assertions over the proposal's impacts. Any concerns over the proposal amounting to anything more than the change of use sought, might reasonably have been addressed through planning conditions. A more helpful approach might have avoided the appeal, or the Council's case might sensibly have been promptly reviewed once one had been made. On the basis of the foregoing, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Cambridgeshire District Council shall pay to Mr Gary Fleming, 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. The applicant is now invited to submit to South Cambridgeshire 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.

Jonathan Price

INSPECTOR

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