

Costs Decision

Hearing held on 4 August 2016

Site visit made on 4 August 2016

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Costs application in relation to Appeal Ref: APP/X1545/W/16/3148924 The Griffins, Tudwick Road, Tolleshunt Major, Essex CM9 8LW

- 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 and Mrs Vallis for a full award of costs against Maldon District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for a new dwelling in connection with boarding kennels without complying with condition 3 attached to planning permission ref MAL/143/78, dated 9 February 1979.
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Decision

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

The submissions for Mr and Mrs Vallis

2. The application for costs was submitted in writing at the Hearing. Firstly in terms of procedural issues, the Council took 7 months to determine the application. It refused to respond to any communication, failed to provide an explanation for the application not being determined and did not make any attempt to seek an extension of time. It was necessary to pursue a formal complaint to the Council's Chief Executive in order for the Decision to be made.
3. With regard to the substantive case, it is asserted that the Council has not provided any evidence to refute the evidence of the applicants.

The response by Maldon District Council

4. The Council provided a written response at the Hearing. It accepts there was a delay in determining the application, but contends that it has not led to any additional cost to the applicants, as the proposal did not meet all the requirements of Policy CC16 of the Maldon Replacement District Local Plan (LP) (2005). As such the delay did not result in a different outcome.

Reasons

5. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
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6. Paragraph 49 of the Guidance requires the decision to be based on evidence. Policy CC16 of the Maldon Replacement District Local Plan (LP) (2005) states that permission to occupy a dwelling without compliance with a restrictive condition will only be granted where all of the four criteria are met. Criterion c) of LP Policy CC16 requires the applicant to demonstrate that the property has been marketed with the occupancy restriction in 'farming journals and newspapers nationally for a minimum period of three months'. The applicants confirmed that this had not been carried out. Consequently I find that the Council did not behave unreasonably in refusing planning permission for the proposal.
7. Turning to the procedural claim, and notwithstanding my findings on the appeal decision, the applicants should have been aware of the policy requirements. Although there was limited communication between the parties during the determination of the application, the Council cannot be criticised for not specifying something that it required in its development plan. I acknowledge that the approximately 7 months between validation and the determination of the application could be considered unreasonably long, and is unfortunate. However, the conflict with development plan policy means that there would have been an appeal in any case, and therefore the delay did not lead to any unnecessary or wasted expense in the appeal process. Accordingly, an award of costs is not justified.

Claire Victory

INSPECTOR