

Costs Decision

Hearing held on 12 January 2017

Site visit made on 12 January 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 14 February 2017

Costs application in relation to Appeal Ref: APP/X1545/W/16/3156862 Manor Farm, Old Heath Road, Southminster, Essex CM0 7BW

- 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 Smart Planning for a full award of costs against Maldon District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the 'revised orientation of farm worker's dwelling and use of roof void to provide bedroom accommodation incorporating rear dormer (revision of FUL/MAL/10/00702, 13 October 2010)'.
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Decision

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

The submissions for Smart Planning

2. The costs application was made orally at the Hearing, albeit its terms were set out in writing and copies of the application were circulated at the Hearing. It is therefore unnecessary for me to summarise the application.
3. In answer to the Council's response to the application the applicant commented that the extant 2010 planning permission for a dwelling does not mention the number of bedrooms that could be provided. The applicant confirmed that while it had been accepted during the course of the Hearing that the provision of a rear dormer would increase the built form of the dwelling, in comparison with the dwelling subject to the 2010 permission, that difference would be very modest and thus insignificant. It was "fallacious" for the Council to rely on the dwelling being a four bedroom property, when demonstrably it would be the same building granted planning permission under application FUL/MAL/16/00577.
4. In the event that the appeal is not allowed there will then be enforcement issues if stud walls are installed when the loft is converted.

The response by Maldon District Council

5. During an adjournment the Council prepared a written response to the application. Following the adjournment the Council circulated copies of its response, which was read out at the Hearing. There is therefore no need for me to summarise the response here.
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Reasons

6. 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.
7. The issue central to the appeal concerned the interpretation of the meaning of 'size' for the purposes of the third criterion listed under saved Policy CC14 of the Maldon District Local Plan of 2005. There was a fundamental difference of opinion between the parties, with the applicant adopting a narrow interpretation, treating size only to mean the physical dimensions of the dwelling. The applicant contends that physically there would be no or very little difference between the proposed dwelling and the dwellings subject to the extant permissions, with the dwelling subject to the 2016 permission being virtually identical to the appeal development. The only difference being that in the case of the dwelling subject to the 2016 permission it would have an open plan first floor area, while for the appeal development the first floor would be partitioned to provide two bedrooms and a bathroom.
8. The Council argued that a wider meaning should be applied to Policy CC14's third criterion because of its reference to functional need, thus permitting the number of bedrooms to be taken into account.
9. For the reasons I have given in the appeal decision I have found the Council's interpretation of the meaning of size for the purposes of Policy CC14 to be compelling. That is because neither the policy's wording nor its explanatory text suggest that any assessment under the third criterion should be limited to the consideration of a dwelling's physical dimensions alone. This was a point that the applicant accepted during the course of the Hearing.
10. I therefore consider that it was reasonable for the Council to take account of the number of bedrooms to be provided and to go onto reach a conclusion that evidence would be required to demonstrate that there was a functional need for a four bedroom dwelling. For the reasons stated in the appeal decision I have concluded that it has not been demonstrated that there is currently a functional need for a four bedroom dwelling to be provided at the site.
11. I am also of the opinion that there was no inconsistency in the approach taken in relation to the determination of application FUL/MAL/16/00577. That is because the dwelling benefiting from the 2016 permission would be for a one bedroom dwelling, possibly two if the study was to be occupied as a bedroom. With the imposition of the plans condition (condition 1) under the terms of the 2016 permission it would not be possible to sub-divide the first floor into bedrooms, and remain compliant with the terms of this permission, until after the dwelling had been built and occupied. For the reasons I have set out in full in the appeal decision I have attached limited weight to that possible fallback position.
12. I have found the Council's decision to refuse planning permission to be a reasonable one. The Council's evidence has substantiated its decision, demonstrated consistency in the way it determined the appealed application and application FUL/MAL/16/00577 and also shown that the extant permissions relating to the site were not disregarded. The Council's decision has not prevented development that should clearly have been permitted. I

also consider that there has been no failing in the Council's on-going case management. Accordingly I do not accept that the Council acted unreasonably when regard is paid to the provisions of the PPG, most particularly its section identifying the circumstances when an award of costs might be made against a local planning authority, namely Paragraph 049.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Grahame Gould

INSPECTOR