
Costs Decision

Site visit made on 23 January 2017

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 20th February 2017

Costs application in relation to Appeal Ref: APP/W1525/W/16/3160970 Land between Elmcote and Dove Cottage, Main Road, Bicknacre, Chelmsford CM3 4HW

- 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 Chelmsford City Council for a full award of costs against Mr Clive Attwell.
 - The appeal was against the refusal of planning permission for one detached four bedroom dwelling.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. In accordance with Paragraph 053 of the PPG, the Council allege that the appellant has acted unreasonably as his appeal follows a recent appeal decision¹ for a similar development at an adjoining site, which was dismissed. The Council believes this to be a substantive failing because, in determining that appeal, the Inspector concluded that that the site next to the appellant's was not within a built up frontage.
3. Significantly, the appellant co-objected to the previous appeal scheme and submitted representations suggesting there is no built frontage in the vicinity of the previous appeal site². Of particular note is that the appellant's consultant at the time, in making representations, referred to another previous appeal decision³ in which the Inspector described the development in the vicinity of the appeal site as a '*sporadic straddle of dwellings*' and not a built up frontage as it lacked a closeness and continuity. It seems somewhat counter intuitive for the appellant to now argue the opposite. In my view the current appeal site is very similar to the adjacent site as are the proposed developments.
4. However, the appellant argues that his site is materially different to the previous appeal site as it is viewed as part of the residential development to the north and the trees along his site's southern boundary naturally define the end of this run of

¹ APP/W1525/W/15/3131291

² Letter by Humphreys and Co dated 8 June 2015

³ Council planning application reference 96/05024/OUT

development. He points to Paragraph 10 of the Inspector's decision and the finding contained therein that the appeal site then under consideration forms a significant break in development. Another distinction drawn is that the previous appeal scheme was for two houses whereas his application is for one.

5. However, in Paragraph 10 of his decision, the Inspector also finds that there is a noticeable change in character around Sticklemead, where the tightly knit row of dwellings to the north of this property gives way to a more sporadic and dispersed pattern of individual dwellings in spacious plots. The appeal site is located to the south of Sticklemead and is therefore part of the dispersed pattern of development described by the Inspector.
6. Furthermore, in Paragraph 8 of his decision, the Inspector specifically refers to Sticklemead, Tri Lodge and Elmcote and describes these properties as having an individual and spacious character. The presence of commercial buildings to the rear of Elmcote did not alter this finding. The reference to 'individual' is significant as it is apparent to me that the Inspector did not consider Elmcote to be part of a built up frontage if it, and the neighbouring properties, exhibited individual characters. The appellant has attempted to draw a different conclusion to the previous Inspector by arguing the change in character arises along the southern boundary of Elmcote. However, such a conclusion has failed to properly consider the findings of the previous Inspector and thus amounts to a substantive failing of significance.
7. This is because the appellant has not referred to any material change in circumstances, including local or national planning policy that could have otherwise justified his departure from the previous Inspector's conclusions. Nor has he referred to any physical changes around the appeal site that could have justified his appeal either. Moreover, in this context the difference between applying for one or two dwellings is not a determinative matter. The point in question is whether the appeal site is within a built frontage and this has already been determined as not being the case by a previous Inspector. As such, the appellant's decision to pursue an appeal was unreasonable and consequently the Council's costs in defending its decision have been incurred unnecessarily.
8. I therefore 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

9. 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 enabling powers in that behalf, IT IS HERBY ORDERED that Mr Clive Attwell shall pay Chelmsford City Council, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision. Chelmsford City Council is now invited to submit to Mr Attwell, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

Graham Chamberlain,
INSPECTOR