
Costs Decision

Site visit made on 9 January 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 22 February 2017

Costs application in relation to Appeal Ref: APP/A1530/W/16/3157261 Daisy Green, Eight Ash Green, Essex CO3 8NF

- 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 Mrs Janet Fowler for a full award of costs against Colchester Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of barn to residential use and construction of basement.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and if it fails to produce evidence to substantiate each reason for refusal on appeal.
 4. Although the planning application was refused for one reason it encompasses a number of issues, relating to accessibility, character and appearance and whether the barn would need to be demolished as part of the proposals.
 5. Policies H1, SD1 and ENV1 of the Colchester Local Development Framework Core Strategy 2008 (the Core Strategy) advocate a hierarchical approach to the location of new development and require that development is located within development boundaries and avoids isolated houses in the countryside. Furthermore, growth should be located at the most accessible and sustainable locations. It is necessary therefore for the Council to make an assessment of the proposals against these policies of the development plan in terms of the accessibility of the site. I have reached the same conclusion as the Council that the site is located so as to be accessible only by the car rather than other transport alternatives.
 6. The Council gives limited if any weight to the existence of an approval under Class Q of The Town and Country Planning (General Permitted Development)
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(England) Order 2015 (the GPDO). It is for the decision maker to decide what weight is to be given to the material considerations in each case. Although I have not agreed with the Council in this matter in relation to accessibility I consider that they have adequately supplied evidence for their reasoning on this matter. I am satisfied therefore that although I have reached a different conclusion to the Council, they advanced a case that, in their opinion, indicated that the proposal was in conflict with the development plan.

7. The decision also refers to detriment to the rural character of the area caused by the development. In this case, the Council's evidence on the issue was set out in a few paragraphs in its statement. The evidence did not go into great detail but, to my mind, it was sufficient to articulate the concerns held by the Council. Indeed, after considering the evidence before me, I have found that the proposal would result in harm to the landscape character and appearance of the area. I therefore find that the Council has substantiated its reason for refusal in respect of character and appearance and that it has not acted unreasonably in this regard.
8. The Council also refer to their concern that, despite claims otherwise, the existing building will need to be dismantled and potentially damaged whilst the extensive excavation for the basement takes place. They do not refer particularly to any harm that would be caused by such demolition. I understand the appellant's opinion that the demolition of the existing structure may not necessarily be a material consideration in the determination of a planning application. However, in this instance if the barn had to be demolished to facilitate the current appeal proposals that would affect the weight to be given to the existing permission to provide a house through conversion only. I do not consider therefore that the Council has acted unreasonably in this issue.

Conclusion

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense has not been demonstrated. For this reason an award of costs is therefore not justified.

Zoe Raygen

INSPECTOR