
Costs Decision

Site visit made on 7 February 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 01 March 2017

Costs application in relation to Appeal Ref: APP/X1545/W/16/3158808 Glen Loy, Latchingdon Road, Cold Norton, Essex CM3 6HR

- 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 Ted Law for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of application for planning permission for outline planning application for twelve dwellings, including four affordable units with all matters reserved for subsequent approval with the exception of vehicular access.
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Decision

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

The submissions by Mr Ted Law and response by Maldon District Council

2. The appellant states that the Council has failed to substantiate its reasons for refusal in respect to highway matters and ecology. The appellant considers both matters have been adequately addressed and any outstanding matters could be resolved through the imposition of planning conditions. The Council has acted unreasonably as a result and he has incurred unnecessary and wasted expenditure in defending these reasons. A partial award of costs is therefore justified.
3. The Council states that its reasons are explicit for the refusal on both matters. In respect of ecology, the Council cites the Planning Practice Guidance (the Guidance) which requires an ecology survey if the type of location of development is such that the impact on biodiversity may be significant and existing information is lacking or inadequate. The Council states it has not acted unreasonably by refusing the scheme on inadequate information. The imposition of conditions would not necessarily meet the tests of the National Planning Policy Framework. A partial award of costs should therefore be refused.

Reasons

4. Paragraph 030 of the Guidance (*reference ID: 16-030-20140306*) advises that costs may only 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. Paragraph 049 of the Guidance (*reference ID: 16-049-20140306*) states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal by, amongst other things, failure to produce evidence to
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- substantiate each reason for refusal on appeal or refusing planning permission on a planning ground capable of being dealt with by conditions.
5. As I have set out in my decision, the Council's concerns on highway matters particularly in respect to visibility splays were not unreasonably made. It adequately explained why it found the size requirements within the Design Manual for Roads and Bridges were applicable and appropriate for the road conditions. The appellant on the other hand offered no persuasive evidence as to why the Manual for Streets should be used, or evidenced that the Council altered its position on this matter, as he suggests. On that basis, I found in my decision that I could not conclude with any degree of certainty whether the proposed visibility splays were adequate and safe or that planning condition could be imposed to deal with this matter effectively.
 6. However, the same cannot be said for matters relating to ecology. Again as I set out in my decision, the Council determined the scheme on an older version of the ecology appraisal dated June 2015, as clearly expressed in its officer's report, instead of the updated ecology appraisal of February 2016, which was submitted in advance of its determination. The Council has failed to explain why it did this, and in doing so why it ignored the advice of its own expert whom, according to the appellant and not disputed by the Council, largely accepted its findings. The Council did not explain why the appellant's judgements on the unlikely presence of slow worm, common lizard and grass snake was not acceptable to it, and no evidence has been advanced as to why the Council felt planning conditions in respect of biodiversity enhancements were considered in its determination of the scheme.
 7. In my judgement, the Council made an unsound planning decision on ecological grounds. In failing to consider the updated ecology appraisal of February 2016 which in my judgement largely addressed its ecology concerns, it acted unreasonably and this resulted in wasted expenditure on the appellant's part having to provide a rebuttal statement on ecology grounds. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs in respect to ecology matters is justified.

Costs Order

8. 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 the Maldon District Council shall pay to Mr Ted Law, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending the ecology matters.
9. The applicant is now invited to submit to Maldon 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. 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 Costs Office is enclosed.

R Allen

INSPECTOR