
Costs Decision

Site visit made on 6 February 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 03 March 2017

Costs application in relation to Appeal Ref: APP/W1525/W/16/3160418 Tall Oaks, Mayes Lane, Sandon, Chelmsford CM2 7RW.

- 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 I Moss.
 - The appeal was against the refusal of planning permission for a full application for a single dwelling.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The PPG¹ gives examples of unreasonable behaviour that may give rise to a substantive award of costs against an appellant. Amongst other things, this can include where the '*appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period*'.
4. The Council is of the view that the appellant behaved unreasonably by persisting in efforts to secure planning permission on the site despite being given unfavourable pre-application advice at the outset and having had a previous appeal dismissed in July 2016. As a result, it is argued that this has caused unnecessary or wasted expense in the appeal process.
5. The current appeal scheme was submitted to the Council on or around 26 July 2016, which is just over 2 weeks after the previous appeal decision was issued². As a result, there can be no doubt that the appeal is '*recent*' in the context of the PPG advice. It is also the case that the current scheme is on '*substantially the same site*' as the previous scheme.

¹ Paragraph: 053 Reference ID: 16-053-20140306

² APP/W1525/W/16/3146355

6. Although the previous scheme was an outline application with all matters reserved, it is evident that a detached bungalow was envisaged. I appreciate more information has been submitted with the current appeal scheme in terms of landscaping, the wayleave agreement and the design of the dwelling as well as an access appraisal. However, taken individually or collectively these changes do not affect the basic substance of the scheme. Neither do they go to the heart of the Council's objections to the scheme, supported by the previous Inspector, which concern the conflict with Policies CP5 and DC2 of the Core Strategy. I can also find no suggestion from the Council or the previous Inspector that these concerns could have been overcome by the submission of additional information of the type listed above. Consequently, I have no hesitation in concluding that the current scheme is at least '*very similar*' to the 2016 scheme.
7. There have been no material changes to the site or surrounding area in the short intervening period between the two appeals nor any material change in policy circumstances. The Appellant's Grounds of Appeal has failed to advance a cogent case for the scheme in light of the previous decision and largely reiterates many of same arguments that were put before the previous Inspector.
8. Overall I find In this case the Council has acted in a reasonable and consistent manner in determining the application. The appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
9. Whilst I have some sympathy for the appellant and accept that he acted in good faith partly due to erroneous advice offered by a Councillor, he failed to properly consider whether he had a reasonable prospect of succeeding. In this respect, I find the unreasonable behaviour threshold has been passed. Accordingly, the Council's costs in mounting the appeal were unnecessarily incurred and an award of costs is, in this case, justified.

Costs Order

10. 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 Mr I Moss shall pay Chelmsford City Council the costs of the appeal proceedings described in the heading of this decision.
11. Chelmsford City Council is now invited to submit to Mr I Moss, 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.

D. M. Young

Inspector