



Costs & Decisions Team

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Your Ref:

Our Ref: APP/X1545/W/16/3152589

Date: 6 April 2017

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322
LAND AT REAR OF 60-68 COLCHESTER ROAD, GREAT TOTHAM, MALDON, ESSEX
APPEAL BY CCC PROPERTY: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decision of 9 March 2017 concerning the appeal by CCC Property. The appeal was against Maldon District Council's refusal of planning permission, dated 16 December 2015, for:

"Outline planning permission to extend and alter access drive, erect ten houses comprising 9No. Two-storey houses and 1No. bungalow, construct garages, lay out parking and turning areas, and form amenity areas. Including details of means of access and layout with all other matters reserved."

on land described above.

2. This letter deals with your late application¹, on behalf of the appellants, for a partial award of costs against the Council as made in written correspondence dated 15 December 2016 and 14 February 2017. The Council replied on 8 February 2017. As these representations have been made available to the parties, it is not proposed to summarise them. They have been carefully considered.

Summary of the decision

3. The costs application fails and no award of costs is being made. The formal decision is at paragraph 13 below.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

¹ The Planning Inspectorate's letter of 20 January 2017 explained to the parties that, in the relevant circumstances, the Secretary of State had exercised discretion to accept the late application for consideration.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party which do not give rise to a local inquiry, where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of the guidance contained in the Government's Planning Practice Guidance (PPG), the appeal decision, the appeal papers, the written costs correspondence and all the relevant circumstances.

Conclusions

7. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably, with the result that the appellants were put to unnecessary expense, by submitting evidence at a late stage in the appeal proceedings.

8. Paragraph 047 of the PPG outlines examples of unreasonable behaviour by the Council which may result in an award of costs. This includes introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

9. You contend that the Council acted unreasonably by submitting late and new evidence in the form of a recently issued appeal decision (APP/X1545/W/15/3139154 – 'Nipsells Chase decision') in respect of a similar development elsewhere in the district, which raised landscape matters in addition to the Council's five year housing land supply position. You consider that this unreasonable behaviour led to wasted or unnecessary expense in having to spend additional time in considering and assessing all the relevant matters raised in that decision that could reasonably be applied to this appeal. The submission of the Nipsells Chase decision also delayed the Inspectorate's decision-making process.

10. The Secretary of State accepts that the Council's submission of the Nipsells Chase decision by email dated 9 December 2016 was made after the deadline for written submissions. However, paragraph B.2.1 of the Planning Inspectorate's Procedural Guide Planning appeals – England explains that a local planning authority must alert the Planning Inspectorate in writing, as soon as possible, to any appeal decision that has been made on a local similar development since the appealed application was decided. It is evident from the Council's email of 9 December 2016 that they considered that the Nipsells Chase decision updated their current position with regard to their five year housing land supply rather than raising any new issues and requested that the decision was brought to the attention of the Planning Inspector. Further, paragraph B.2.3 of the Planning Inspectorate's guide also states 'New evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their full statement of case'. It is noted that the Nipsells Chase decision is dated 7 December 2016 and therefore would not have been available to the Council at the time when the written appeal submissions were completed. It would therefore appear that the Planning Inspectorate took a pragmatic view regarding the late submission of the Nipsells Chase decision and decided to accept it provided that, in fairness, the appellants were given the opportunity to comment on the relevance (if any) of the decision on the appeal development. You proceeded to do so by letter dated 15 December 2016 and you decided that it was necessary to comment on all matters in that decision that you considered were relevant to the appeal.

11. In the circumstances described it is considered that there were mitigating circumstances for the Planning Inspectorate entertaining the late submission in this case. As such, the submission formed part of the appeal proceedings and the expense incurred by the appellants in responding to it was therefore not unnecessarily incurred. In this regard it is noted that although the five year housing land supply position - the reason given by the Council for submitting the Nipsells Chase decision - was not a determinative

factor in the appeal, the Inspector did nevertheless carefully consider the decision in his determination of the appeal but gave it limited weight.

12. For these reasons, the Secretary of State is not satisfied that the Council have been shown to have acted unreasonably, as alleged. He concludes that the normal pre-conditions – unreasonable behaviour by the party claimed against resulting in unnecessary or wasted expense to the claiming party – have not been demonstrated in this case.

FORMAL DECISION

13. For these reasons the Secretary of State has decided that an award of costs on grounds of "unreasonable" behaviour resulting in unnecessary expense is not justified in the particular circumstances of this case. The appellants' application for costs is therefore refused.

14. A copy of this decision is being sent to the Yee Cheung, Senior Planning Officer at Maldon District Council.

Yours faithfully

S Parsons

STEVE PARSONS
Authorised by the Secretary of State
to sign in that behalf