



Costs Decision

Site visit made on 9 January 2018

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2018

Costs application in relation to Appeal Ref: APP/W1525/W/17/3181206 Land South of Brock Farm, Ingatestone Road, Stock, Essex CM4 9PD

- 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 Edan Homes for a full or partial award of costs against Chelmsford City Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described as: *'Regenerate existing site access and creation of service road to proposed warehouse facility for short rotation coppice drying and storage. Application for land use for short rotation coppice to provide a sustainable energy fuel source for biomass systems'*.
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Decision

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

The Case for Edan Homes

2. The Applicant claims that the Council refused an application which should have been permitted; this is claimed to be unreasonable behaviour as described in PPG paragraph 049 Ref ID: 16-049-20140306. The policies referenced by the Council in the reason for refusal are not appropriate and the development accords with the requirements of these policies.
3. The Applicant claims to have incurred unnecessary and wasted expense in having to make the appeal.
4. As set out in the Applicant's appeal statement, in relation to reason for refusal 1 there was:-
 - incorrect interpretation and implementation of both the NPPF and Policy DC1 of the adopted development plan;
 - no clear policy position or Government guidance for the reason for refusal;
 - ignorance of or ignoring appropriate and relevant case law;
 - the development would not be to the detriment of the character of the host property.
5. In relation to reason for refusal 2:-

- the Council has not evidenced any demonstrable harm within the officers report or the reason for refusal;
 - the Council's position is based on unsubstantiated claims;
 - the Council has not provided policies within the reason for refusal;
 - the Council has not given appropriate weight to the material consideration that is the green credentials of the development;
 - no clear policy position or Government guidance for the reason for refusal;
 - the Council ignoring the fundamental principle of planning that an application should not be refused when a condition can be imposed to overcome the harm.
6. In final comments the Applicant reiterates that the Council has erred in its understanding of policy, has ignored relevant points of law and has unreasonably accepted the Highway Authority's comments.
7. If the substantive claim is unsuccessful, the Applicant seeks partial costs as the Inspector deems appropriate, in relation to those individual elements, set out above where the LPA acted unreasonable leading unnecessary costs being incurred by the Applicant.

The Response by Chelmsford City Council

8. It is presumed that the application is made on substantive grounds, rather than procedural.
9. The Council has not acted unreasonably. It is evident through the Officer's Report and the Statement of Case submitted for the appeal that the Council has clear, reasonable and justified reasons for not granting planning permission. The Council's case has also been substantiated and backed up with references to national policy through this appeal.
10. Policy DC1 is the Council's local development plan policy in relation to the Green Belt. It is therefore quite correct that this policy was referred to, given that the Council's opinion is that the development does not accord with national and local Green Belt Policy.
11. The Appellant is also critical that refusal reason 2 does not contain a reference to a policy. This is because highway safety (and the consultation response from the expert Highway Authority, Essex County Council) is a material consideration and not a policy in the development plan. This material consideration indicated that the application should not be approved because of a lack of necessary information.
12. It is the Council's contention that, in light of the above, the local planning authority has not acted in an unreasonable manner and the application for costs should be dismissed.

Reasons

13. In my appeal decision I have concluded that the Applicant and the Council have both identified the wood coppicing operation incorrectly as an agricultural activity, contrary to the statutory definition of agriculture. However had it

been identified instead as a forestry operation then essentially the same development plan and national policies would have applied. The Council would still have refused planning permission on the reasonable conclusion that the proposal is in conflict with Policy DC1 and the Framework.

14. In relation to the first reason for refusal, in my appeal decision I have agreed with the Council that for the building to qualify as not inappropriate development in the Green Belt it needs to be shown to be a building 'for' agriculture or forestry, and that has not been adequately demonstrated in this case for reasons set out in the main decision. The Council thus reasonably refused permission.
15. In relation to case law the Applicant claims that to describe a building as an agricultural building is sufficient for it to qualify as development that is not inappropriate in the Green Belt. The extract provided in the Applicant's Appeal Statement is from the case of *The Queen on the Application of Samuel Smith Old Brewery & Oxtan Farm v North Yorks County Council and Darrington Quarries Ltd (7 March 2017) EWHC*. That case did not concern the definition of an agricultural or forestry building. The case mainly concerned issues of openness and whether it disqualifies development as not inappropriate in relevant cases. I do not consider that it was of especial relevance to the subject application determination or that the Council ignored relevant case law when concluding that the warehouse has not been shown to be a building for agriculture.
16. In this case, for reasons set out in the appeal decision I have concluded that the warehouse is not for a building for agriculture. I therefore support the Council's interpretation of the development plan and national policy. Even if the coppicing is a forestry activity rather than agriculture, then the intended function of the warehouse in relation to that function is unclear and confused.
17. The application was not refused on the basis of any detriment to the character of the host property and there was no reason for the Council to produce evidence in that regard.
18. The second reason for refusal concerned a lack of information about soil importation and associated traffic movements. In that regard it was the Applicant who was at fault in not clearly describing the proposal and whether it did or did not include land raising and associated movements of material. It was not unreasonable for the Council to conclude that the development did include those works and to refuse permission owing to the lack of information. I have dealt with the appeal on the basis that those works were not clearly included. However that raises further questions as to whether the coppicing operation could be implemented without them and whether the warehouse would be needed.
19. It is not necessary to conclude in a reason for refusal that there is a conflict with policy when the refusal is on the basis of a lack of information. The effects of traffic movements including heavy lorries can be a material planning consideration whether or not a specific local or national policy has been identified. In the absence of adequate information the Council could not conclude whether the activity would be harmful or not.
20. In the appeal decision I have acknowledged national policy that the benefits of renewable energy are capable of being considered as a material consideration

for development in the Green Belt but I explain there that the claimed benefits have not been properly identified or explained in this case. It was not unreasonable in these circumstances for the Council not to explicitly refer to such benefits in the Officer Report.

21. In the absence of adequate information about the import of material and associated traffic movements, and because planning permission was also being refused for Green Belt reasons, it was not unreasonable for the Council to refuse permission rather than impose a condition requiring submission of the additional information. It remained possible that, depending on the quantities involved and the materials needed then no acceptable scheme for the traffic movements could be devised. In that case any permission in that regard could not have been implemented. Permission would have been refused on Green Belt grounds in any event.

Conclusion

22. It is concluded that the Council did not behave unreasonably except in incorrectly describing the coppicing as an agricultural activity, which conclusion was not objected to by the Applicant. The policies and the first reason for refusal do however also refer to forestry. The decision to refuse would probably have been the same had the activity been described as forestry. In any event the appeal would have been needed and the full costs of the appeal were not wasted. There was no unnecessary expense. The application should therefore be refused.

Robert Mellor

INSPECTOR