
Costs Decision

Inquiry Held between 13 and 19 August 2019

Site visit made on 13 and 19 August 2019

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 1st October 2019

Costs application in relation to Appeal Ref: APP/C1570/W/19/3226302 Land off Station Road, Flitch Green, Essex CM6 3HF

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gladman Developments Limited and Messrs Hawkes for a partial award of costs against Uttlesford District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 240 dwellings with public open space, landscaping, and sustainable drainage system (SuDS) and vehicular access point from Station Road. All matters reserved except for means of access.
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Decision

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

The submissions for Gladman Developments Limited and Messrs Hawkes

2. The costs application was submitted in writing at the inquiry. The appellants sought a partial award for the costs due to the introduction of fresh and substantial evidence at a late stage about the harm to the setting of Felsted Conservation Area. The main points in the written application were that the harm to the Conservation Area was not referred to in the relevant reason for refusal, the Council's statement of case and the Planning Statement of Common Ground (SOCG). It was first introduced by the Council's heritage witness.
3. The following additional points were made orally. The Council did not give a good reason why it departed from the reason for refusal. The approach of the Council was a textbook example of unreasonable behaviour.

The response by Uttlesford District Council

4. The response was made in writing at the inquiry. The main points in the written response were that the appellants were well aware of the Council's position from 5 July 2019 onwards when the parties' heritage witnesses were in communication about the Heritage SOCG. Furthermore, the appellants' Heritage Assessment and their own heritage witness referred to the Conservation Area as a designated heritage asset that required assessment. The Conservation Area issue did not prolong proceedings.

Reasons

5. The Planning Practice Guidance (PPG) advises that costs may 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.
6. It would have been preferable for harm to the setting of Felsted Conservation Area to have been referred to specifically in the relevant reason for refusal. However, the reason for refusal referred to harm to the setting of Felsted School and the Church of the Holy Cross, both of which lie within the Conservation Area. In this respect it was difficult to disentangle the assessment of the harm to the setting of the listed buildings from the harm to the heritage asset within which they lie.
7. Moreover, it is expected that an expert witness reviews the case that he/she is being asked to present in advance of an inquiry so that the evidence is a true reflection of their professional view. This is what occurred and led to the Heritage SOCG which set out the matters in dispute and informed the preparation of proofs of evidence.
8. The review of the heritage case would have taken into account the appellants' Built Heritage Assessment. This assessed the setting of four designated heritage assets that might be affected by the development, including the Felsted Conservation Area. Both heritage witnesses addressed the impact on the setting of these heritage assets in their evidence as required by the National Planning Policy Framework. It was reasonable for the Council's heritage witness to come to a different view on the matter. The harm to the significance of the Conservation Area was substantiated in the evidence.
9. The introduction of the case in relation to the Conservation Area at a relatively late stage did not lead to work that would not otherwise have arisen or a prolonging of the proceedings. It was necessary to address the harm to the setting of the Conservation Area in any event.
10. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Dakeyne

INSPECTOR