
Costs Decision

Site visit made on 22 October 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2019

Costs application in relation to Appeal Ref: APP/X1545/W/18/3215950 Land adjacent to Tanglewood, Scalby Road, Southminster, Essex CM0 7BP

- 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 M Pilkington for a full award of costs against Maldon District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the material change of use of land for stationing of caravans for residential occupation by one family with associated development (hard standing and utility building).
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Decision

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

The submissions for Mr M Pilkington

2. The decision notice fails to explain why the development should not be permitted and the appellant implies that the Council's decision notice relies on vague and generalised reference to Council policies and unsubstantiated statements. The Council has not justified why the site is not well related to the existing built up area and capable of having access to essential services.
3. The development was prevented when it should clearly have been permitted. The Council took the view that the new gypsy pitch could be occupied independently. It is pointed out that policy does not preclude this and the interpretation by the Council of adopted policy is said not to be within any reasonable justification. Reservations are also expressed as to whether or not the Council has understood its own 'need' assessment for gypsy and traveller pitches, which the appellant does not consider to be up-to-date and/or robust in any event.
4. In reaching its decision on issues relating to sustainability, the Council did not give due regard to the case officer's advice, the committee report recommendations or national guidance, some of which is also said to have been misunderstood or misapplied by members. In addition, it is asserted that previous decisions within Maldon District, including the 2006 decision at the adjoining site, were not given due regard in considering the sustainability of the location.
5. Members of the South Eastern Area Planning Committee did not carry out a site visit.

6. The appellant contests that the Council's concerns could be overcome through the imposition of conditions and directs me to the list of conditions listed within the Council's Committee Report.
7. The Council has not sought to confirm the personal circumstances and housing needs of the family or give regard to their local links with the existing family at the adjacent gypsy site and only limited weight was given to the absence of alternative sites. Furthermore, no consideration has been given to a temporary or personal permission.
8. It is for the above reasons the appellant considers the Council has acted unreasonably and that this has caused the appellant to incur unnecessary and wasted expense in the appeal process.

The response by Maldon District Council

9. Policies S8 and H6 of the Maldon District Local Development Plan are concerned with development beyond defined settlement boundaries and protecting the character and appearance of the rural area. The Council indicates the Council's concerns have been set out in its appeal statement and advises that the impact of a proposal on the character and appearance of the area is a matter of judgement.
10. It is highlighted that members do not have to accept the advice of their officers. The Council's appeal statement explains how the proposal would contravene adopted development plan and national policies. The Council contests that it has explained why it considered the proposal would not be a Policy H6 'appropriate expansion' and considers that it has demonstrated how this policy requirement has been reasonably interpreted. The Council also considers that it has explained its concerns with relation to character and appearance, as well as accessibility, within the context of development plan and national policy.
11. In relation to previous decisions at other sites in the Maldon District, the Council asserts that the difference between those developments, including in one case, the time span since that decision was made, has been considered within the Council's appeal statement.
12. With regard to carrying out a site visit, the Council advises that members are local people familiar with the area and that at the Planning Committee meeting Council members had sight of the officer's report that included a description of the site and its surroundings and site photographs that formed part of the officer's power-point presentation at the meeting.
13. The Council contend that as the members concerns related to the principle of the development, including the accessibility of the site, these matters were not possible to overcome by the imposition of conditions.

Reasons

14. Irrespective of the outcome of the appeal, 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.

15. Planning permission was refused by members of Maldon District Council's Planning Committee contrary to the recommendation of its officer to approve the proposal.
16. The Council's decision notice sets out a concise reason for refusal. It sets out those matters that are of concern to the Council and those development plan policies that it considers to be relevant and applicable to those issue. Although the reason for refusal is succinct it clearly explains why, from the Council's point of view, the development should not be permitted. I do not consider the reason for refusal to be vague. Furthermore, having read both parties cases it does not appear to me that the policies cited by the Council in its reason for refusal could be considered to be generalised references to Council policies, as all policies cited are relevant and applicable to the proposed development.
17. It is of course open for Council members to come to a different conclusion to their officers, but the Council must give adequate reasons for its decision. I am satisfied that the application was considered on its own merit in light of policy considerations having regard to other decisions within the District and the housing needs of the appellant and that the Council has substantiated its reason for refusal in these respects. The fact that I have arrived at a contrary view does not, of itself, indicate that the Council has behaved unreasonably.
18. With regard to whether or not Committee members should have carried out a site visit that is a matter of discretion for those Councillors. That said, the members were provided with both descriptive and visual information relating to the site and its surroundings. I consider this, along with the members local knowledge of the District, provided a reasonable level of information to enable members to reach a decision on matters pertaining to character and appearance without visiting the site.
19. I acknowledge that conditions can be used to mitigate the negative impacts of a proposed development. However, in this case the Council's members concerns related to the principle of the development. In such cases it is extremely unlikely that conditions, including temporary or personal conditions, could mitigate such concerns. I have not been presented with any suggested conditions by the appellant that might persuade me otherwise.
20. I accept that the appellant does not agree with the decision reached by the Council, however I consider members of the Council's Committee have exercised their own judgement, and that judgement has been substantiated. It therefore does not appear to me that the appeal could have been avoided.
21. For those reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nicola Davies
INSPECTOR