



Costs Decisions

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Costs applications in relation to:

Appeal A Ref: APP/X1545/C/18/3206383,

Appeal B Ref: APP/X1545/C/18/3206386 and

Appeal C Ref: APP/X1545/W/18/3206391

Land at junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Bill Cooper for a full award of costs for each appeal against Maldon District Council.
 - The hearing was in connection with appeals against two enforcement notices alleging the erection of a gate (Appeal A), a dayroom, access and a hard standing (Appeal B) and the refusal to grant planning permission for the proposed material change of use of land for stationing caravans for residential occupation for two gypsy pitches (Appeal C).
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Decisions

1. The application for an award of costs in respect of Appeal A is refused.
2. The application for an award of costs in respect of Appeal B is allowed in the terms set out below.
3. The application for an award of costs in respect of Appeal C is allowed in the terms set out below.

The submissions for Appeal A by Mr Bill Cooper

4. The applicant submits that the notice was issued without prior investigation. The Council relied on case law and previous appeal decisions without producing the former in their statement of case. In addition, as the Council do not publish on their website information about enforcement notices issued in their area, the applicant had no option but to lodge an appeal.

The response by Maldon District Council

5. The applicant acknowledged at the Hearing that there had been a breach of planning control in that the gate as originally erected was over 2 metres high. The Council's considerations before the notice was issued were wide ranging and included assessing the character and appearance of the area. In addition, the Council have taken action in respect of other unauthorised gates.

Reasons

6. The Planning Policy Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process
7. The applicant has chosen mainly to focus on one aspect of the breach of control, namely whether the gate is adjacent to the highway or not. The Council's officer report though dealt with the breach of planning control in full. In paragraph 4.1.23 the officer sets out the test established in case law to consider whether the gate is or is not adjacent to the highway, which is a fact and degree judgement. Whilst the Council were unable to produce the case law at the Hearing, this does not detract from their correct reference to the test. Although I have reached a different conclusion from them on the test, this does not mean that the Council's actions amount to unreasonable behaviour. Furthermore, notwithstanding the applicant's "adjacent" argument, at the time the notice was issued, the gate was over 2 metres high and as such the appeals on grounds (b) and (c) failed.
8. With regard to the submission of the appeal in the first place, the onus is not on the Council to provide evidence that they have issued notices in similar circumstances elsewhere. It is though for the Council to demonstrate expediency and to provide full reasons for issuing the notice, having regard to the character and appearance of the area and the harm caused by the development to it, which they did. It was open to the applicant to make enquiries of the Council by other means and, as such, no unreasonable behaviour has been demonstrated.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

The submissions for Appeal B by Mr Bill Cooper

10. In respect of Appeal B, the issue of the notice is predicated on the Council's incorrect view that the 2015 planning permission lapsed when the day room was erected not in accordance with the approved plans. All of the relevant conditions attached to the 2015 planning permission were discharged before work began on site and, as such, the appropriate course of action should have been to issue a breach of condition notice. The Council were advised about this in writing by the applicant both before and after the enforcement notice was issued. If the notice is quashed, then this demonstrates unreasonable behaviour on behalf of the Council, as they were given the opportunity to withdraw the notice but declined.

The response by Maldon District Council

11. The Council put forward a fully reasoned case which informed the decision to issue the notice. The applicant may not have agreed with the case but that does not amount to unreasonable behaviour.

Reasons

12. The Guidance advises that local planning authorities “must” carry out “adequate” prior investigation for enforcement action. This investigation must not only be “adequate” but “diligent” as well. In this case, whilst the Council visited the site, took photographs and assessed the development against relevant policies, they completely misunderstood the situation with regard to the commencement of development on site and deviation from a permission. I found that the day room, the north east (NE) corner hard standing and the access drive and remaining hard standing underneath the tarmac surface were not in breach of planning control. This could have been established if the Council had taken legal advice prior to the issue of the notice and may have led to the Council realising that it was open to them to issue breach of condition notices as well as a redrafted enforcement notice in respect of the laying of tarmac within the site.
13. They could also have taken legal advice after the appeal was lodged, especially as the matter was once again brought to their attention by the applicant. The Guidance advises the Council should review their case promptly when an appeal is made as part of on-going sensible case management. Whilst the consultant employed by the Council at the time appeared to instigate this, no further action was taken. The Council could have withdrawn the notice and issued a corrected notice.
14. As I found though that the laying of tarmac was in breach of planning control, an appeal could not have been avoided. So whilst the Council's actions amount to unreasonable behaviour, in how they attacked the day room and other development on the site, only a partial award of costs is justified for the applicant's unnecessary expense in pursuing the appeal in respect of the day room, the NE corner hard standing and the access drive and remaining hard standing underneath the tarmac surface.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. 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 Maldon District Council shall pay to Mr Bill Cooper, the partial costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent to, details of those partial costs with a view to reaching agreement as to the amount.

The submissions for Appeal C by Mr Bill Cooper

18. The officer recommendation in respect of this application was to approve the development. Members need good reasons to make a decision contrary to officer recommendations. In this case, the Council's reasons for refusal were

vague and generalised, unsupported by any landscape analysis. They also ignored the previous Inspector's findings in the 2015 planning permission when deciding that the site was in an unsustainable location. In addition, conditions could have been imposed to overcome their concerns. In effect, the Council has delayed development which should clearly be permitted as it accords with development plan policy.

The response by Maldon District Council

19. Members are not bound by their officers otherwise the committee system would be pointless. The 2015 planning permission was given before the adoption of the current local development framework and at that time the Council accepted there was unmet need for gypsy and traveller sites. Now that need has been met so the Council are in a different policy situation. With regard to landscape assessment, a case has been made at appeal to support the decision of the Council.

Reasons

20. Planning authorities are not bound to accept the recommendations of their offices. However, if their professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. Local opposition is not in itself a reasonable ground for resisting development.
21. Whilst the Council produced evidence that the development caused harm to the character and appearance of the area, the evidence submitted to support the second reason for refusal failed to have regard to the findings of the previous Inspector that led to the 2015 planning permission, as set out in my decision. Policy H6 from the Council's Local Development Plan (LDP), adopted July 2017, sets out that the proposals for new gypsy and traveller sites will be considered against various criteria. New pitches must be either within an existing site, involve the expansion of an existing site, be within an existing development boundary or, if elsewhere within the district, that it would be sustainable development. The appeal proposal was for an expansion of an existing site and the Council accepted this at the Hearing but argued that the development would be "inappropriate". However, Policy H6 does not define "appropriate" and a gypsy site may be acceptable provided it meets the other criteria in Policy H6 and other policies in the LDP.
22. As set out in my decision, I found that the development did accord with the policies in the development plan. In particular, I found the proposed expansion of the site into an area where such a use did not exist before hand would result in a modest impact on the character and appearance of the area. However, the level of harm would be limited and would be acceptable due to the existing natural screening around and within the site. In addition, the proposed day rooms would be small in scale and as such would cause little harm to the character and appearance of the area, due to their distance from the access and the level of natural screening.
23. Overall, it is considered that the Council's decision has delayed development, which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. In addition, the Council failed to substantiate the second reason for refusal on

appeal and persisting with it in the light of the 2015 planning permission amounts to unreasonable behaviour, contrary to the clear advice set out in the Guidance. Evidence was put forward to substantiate the first reason for refusal and whilst I did not agree with it, that in itself does not amount to unreasonable behaviour. The concerns raised by the Council on this matter though could have been addressed by the imposition of conditions.

Conclusion

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the guidance has been demonstrated and that a full award of costs is justified.

Costs Order

25. 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 Maldon District Council shall pay to Mr Bill Cooper, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent to, details of those costs with a view to reaching agreement as to the amount.

D Fleming

INSPECTOR