



Costs Decision

Site visit made on 26 February 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2020

Costs application in relation to Appeal Ref: APP/H1515/W/19/3234463 Original Part Vegetable Plot and Commercial Woodyard, Chelmsford Road, Blackmore, Essex CM4 0SF

- 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 Brentwood Borough Council for a full award of costs against Trustees of A and G Meadows.
 - The appeal was against the refusal of planning permission for change of use from part vegetable plot and commercial wood yard into 9 dwellings (2 no semidetached and 5 detached units) all with single or double garages and gardens, includes improving existing vehicular and pedestrian access onto Chelmsford Road and new access from Spriggs Lane both onto new access roads within site and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (PPG) states that irrespective of the outcome of the appeal, 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.
3. Paragraph 53 of the PPG states that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. An example of this includes the development being clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
4. There were a number of reasons for refusal which included those relating to the site's location within the Green Belt. The appellant has stated throughout the evidence that they consider the site not to lie within the Green Belt. However, it is a matter of fact that the appeal site does lie within the Green Belt. While I acknowledge the evidence regarding previously developed land and case law cited by the appellant, this does not change the Green Belt designation of the land. Likewise, Policy GB3 of the Brentwood Replacement Local Plan Adopted August 2005 (LP) refers to settlements that are excluded from the Green Belt. The site lies outside of the settlement boundary of Blackmore, consequently, this Policy is not relevant to the appeal site. Accordingly, I consider that the refusal to accept the fact that the site lies within Green Belt to amount to unreasonable behaviour.

5. Furthermore, the appellant has not provided any substantial evidence during the appeal process which addresses the reason for refusal relating to inappropriate development in the Green Belt, such as a consideration of the exceptions stated within paragraphs 145 and 146 of the Framework. As such, the grounds of appeal relating to the Green Belt had no reasonable prospect of succeeding and the Council incurred unnecessary expense in the appeal proceeding defending its position in this particular regard.
6. With regard to the other considerations needed to amount to the very special circumstances required to justify approval of inappropriate development in the Green Belt, while this section of the appellant's statement focussed primarily on the service provided by the Council and repetition of points made earlier in the document, the wider evidence provided by the appellant indicated a number of considerations such as paragraphs within the Framework which they considered would lend support to the proposal. While I have come to a different overall conclusion to the appellant, they have not behaved unreasonably in this particular respect.
7. Turning my attention to the tree survey, I acknowledge that it appears to lack precision and information such as root protection areas, as well as accordance with British Standards. This level of information was insufficient to demonstrate that the proposal would not harm the existing trees and hedges which provide a significant contribution to the visual amenity of the area. However, since the trees on the site do not appear to be protected by Tree Preservation Orders, the appellant has not behaved unreasonably in this particular regard.
8. I note that no pre or post application advice was sought by the appellant, however the appellant has indicated that various attempts were made to discuss the application during that process. Consequently, I do not consider that the appellant has behaved unreasonably in this particular regard.
9. I also acknowledge the Council's concerns regarding the appellant's behaviour during the application process, however while I have had regard to these points, costs may not be claimed for the period during the determination of the planning application.

Conclusion

10. For the reasons outlined above, I conclude that a partial award of costs, to cover the expense incurred by the Council in defending the first of the Council's reasons for refusal, is justified.

Costs Order

11. 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 Trustees of A and D Meadows shall pay to Brentwood Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first of the Council's reasons for refusal, which concerned alleged conflict with LP Policies GB1 and GB2.
12. The Council is now invited to submit to the applicant, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Sabu INSPECTOR