
Costs Decision

Site visit made on 10 August 2021

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 23 August 2021

Costs application in relation to Appeal Ref: APP/X1545/W/20/3263644 Land off Brights Path, rear of 63/65 High Street, Maldon CM9 5EP

- 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 Salisbury for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for demolition of outbuilding and erection of four x 1 bedroom almhouse type dwellings.
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Decision

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

Reasons

1. The application for costs seeks a full award on both procedural and substantive grounds on the basis that the Council acted unreasonably during the determination of the planning application and prevented or delayed a development which should clearly be permitted. The Planning Practice Guidance (PPG) advises that, 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 expense in the appeal process.
2. It clearly took some time for the Local Planning Authority (LPA) to issue a decision for the appeal proposal (9 months). PPG paragraph 16-033-20140306 generally cautions against the award of costs for the period during the determination of the planning application but advises that all parties should behave reasonably throughout the planning process and behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
3. The appellant submits that communication from the LPA was poor and that it took a formal complaint to stimulate the LPA into issuing a decision. I have relatively little evidence before me to substantiate this. It is not uncommon for LPAs to take time in carefully determining planning applications and I accept that the Covid-19 pandemic will have affected the LPAs capacity and processes during a notable part of the 9 month period. There is no dispute that the LPA did not make a physical site visit as part of the planning application process. I do not consider this to be unreasonable, noting that the LPA had recently visited the site in relation to another planning application and had familiarity with the site. Overall, the LPA has responded in a timely manner during the appeal process and submitted all material required of it, including a sound statement of case. I do not consider the LPA has behaved unreasonably

throughout the planning process, including as part of this appeal, to cause the appellant to incur unnecessary costs on procedural grounds.

4. On the substantive grounds of the appeal, both main issues involve judgements on the likely impacts arising from the appeal proposal. The appeal proposal is contrary to technical guidance in the LPAs adopted Design Guide and Vehicle Parking Standards Supplementary Planning Documents, which are material considerations of some weight and referred to in up-to-date development plan policy. In broad terms I find little to demonstrate that the LPAs judgements about the proposal's impacts were unreasonable or inadequately articulated in both the comprehensive officer report and the LPAs statement of case for the appeal.
5. Whilst I have arrived at different conclusions to the LPA on both main issues, on the matter of living conditions the issue is clearly finely balanced in respect of outlook. Consequently, the LPA did not act unreasonably on this matter. In respect of accessibility and impacts arising from the car-free nature of the scheme, I do not share the appellant's assessment that the LPA failed to recognise or give unreasonable weight to the views of the Local Highway Authority (LHA). The LPA has autonomy in determining compliance with its own District vehicle parking standards and assessing the impacts that would arise. The officer report at paragraphs 4.5.8 and 6.2 takes appropriate account of the views of the LHA and the LPAs statement of case succinctly addresses the point on page 4.
6. As addressed in my separate appeal decision, there is ambiguity regarding the availability of vehicular access to the appeal proposal via Old Mill Close (my emphasis). The submitted plans did not show Old Mill Close being within the ownership and control of the applicant. Both the submitted design and access statement and appeal statement refer to the parking spaces at the appeal site being for the benefit of the applicants (No.63 High Street) as opposed to being dedicated to the appeal proposal. The officer report deals appropriately and fairly with access arrangements at Old Mill Close at paragraph 2.1.8. As such the LPA took these matters reasonably into account in terms of its judgement on highway safety and accessibility to the site. The evidence submitted by both parties in respect of the appeal continues to demonstrate a degree of uncertainty about the extent of availability of the Old Mill Close access to the appeal proposal, as opposed to the appeal site. As such there is no certainty that further negotiation or a site visit as part of the application process would have resulted in a different judgement being made by the LPA. Whilst I have accepted that the Old Mill Close access could be available on a limited/sporadic basis for dropping off / collecting, ultimately, and similar to the LPA, I have primarily determined the appeal proposal as being a genuinely car-free development.
7. The officer report deals with the intended occupation of the scheme and the need for both smaller sized dwellings and elderly persons housing at paragraph 4.2.4. At four units, the LPAs assessment that the appeal proposal would only make a "limited" contribution to these needs was not unreasonable.
8. The appellant refers to other decisions (examples provided by the appellant as part of their final comments) and infers inconsistent decision-making by the LPA. On the two main substantive issues in the appeal I find the LPA has reasonably considered the appeal proposal on its own merits and the particular

circumstances at the appeal location. The LPA has presented a coherent case and has not relied on vague, generalised or inaccurate assertions about the proposal's impact.

9. Taking all of this into account I do not find on the two main issues in the appeal, on substantive grounds, that the LPA has unreasonably prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations in the terms expressed at PPG paragraph 16-049-20140306.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.
11. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.