
Costs Decision

Site visit made on 1 September 2021

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2021

Costs application in relation to Appeal Ref: APP/W1525/W/21/3268484 346 Baddow Road, Great Baddow, Chelmsford CM2 9RA

- 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 Chelmsford City Council for a full award of costs against Mr R Drogman.
 - The appeal was against the refusal of planning permission for conversion and extension of existing building to form 8 dwellings.
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Decision

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

Reasons

2. An award of costs may be allowed where it is found that a party behaves unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council's case is that the appeal should have been withdrawn following the approval of a revised scheme at this site¹. Also, that the development is clearly not in accordance with the development plan and the appellant was aware of this based on pre application advice.
4. The application that was approved is notably different to the scheme before me now. I have correspondence that indicates that the appeal was not withdrawn in order to avoid the risk of an award of costs. However, the evidence submitted with the appeal indicates that the appeal scheme represents the optimal viable development at the site and the appeal has been pursued on this basis. Consequently, given the marked differences between the two proposals, I am not persuaded that the approval of a revised scheme represented a good reason to withdraw the appeal scheme in this case. Nor does this amount to lack of cooperation in discussing the appeal. As such unreasonable behaviour has not been demonstrated in this regard.
5. The pre application advice appears to relate to proposals which are significantly different to the appeal scheme. The Council was consistent in its pre application advice that the development should be subservient to the original building and must be high quality design. However, the appellant's evidence sets out that he considered that the appeal scheme satisfied these requirements. Whilst there are differing opinions on this matter, the appellant's case provides adequate supporting evidence for his position. It can be seen in my main decision that I

¹ LPA ref: 21/00818/FUL

come to a different conclusion with regard to the main issues of the appeal. However, in relation to the matters relevant to this costs decision, I do not find that the development is so clearly not in accordance with the development plan nor that it would have no reasonable prospect of succeeding that pursuing the application and appeal was unreasonable behaviour.

6. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
7. For this reason, neither a full nor partial award for costs is justified.

H Miles

INSPECTOR