



Costs Decision

Site visit made on 16 November 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2021

Costs application in relation to Appeal Ref: APP/Z1510/W/21/3274693 Land adjacent to Saxbys Gestingthorpe Road, Little Maplestead, Essex CO9 2SJ

- 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 A Crudgington for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of outline planning permission for erection of detached dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. It goes on to explain that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is also at risk if it fails to produce evidence to substantiate each reason for refusal on appeal; makes vague, generalised or inaccurate assertions which are unsupported by any objective analysis; or does not determine similar cases in a consistent manner.
3. In support of the proposal, the applicant refers to an appeal allowing a new dwelling at Kitsum Cottage, and permission granted by the Council for a dwelling at The Brambles. These developments also at Little Maplestead were not discussed by the Council in its report on the planning application, but it has explained at appeal stage why it did not consider them comparable to the appeal scheme, commenting on their location some way from the site close to the A131 Sudbury Road and bus services there. The applicant advises that the 89 bus cited by the Council does not serve this area, and that because the 89X which does stop in Little Maplestead is a very limited service, it was the availability of the F315 bus which serves a stop adjacent to the appeal site on which these decisions were based.
4. From the information before me, I am unable to reach any firm conclusions on which bus services were in fact considered by decision makers at either Kitsum Cottage or The Brambles, nor on the accuracy of the details of services relied on. However, the extracts of the relevant decision/report both refer to services running approximately once an hour during daytime hours Monday to Saturday. The timetable for the F315 provided by the applicant indicates a

service running approximately 2 hours apart in each direction Mondays to Saturdays. It is unfortunate that the Council does not appear to have considered the particular characteristics of the F315 route, referring instead to general information on Demand Responsive Transport (DaRT) bus services from the County Council and an appeal decision at Wickham St Paul where an Inspector did not find DaRT services sufficient to rely on. Nevertheless, even as presented by the applicant, the F315 does not therefore appear to offer a directly comparable service to the frequency that seemingly informed the Kitsum Cottage and The Brambles decisions. While they may be material considerations, it is therefore reasonable to distinguish the appeal proposal from these developments, and I do not find the absence of reference to them by the Council renders its decision unsound.

5. Even if I were to find that the Council had failed to properly consider the availability of the F315 bus, I am not therefore persuaded that its concerns were unfounded, nor that it would have been otherwise likely to reach a different conclusion on this matter. Moreover, my appeal decision sets out my view in light of the nature of the F315 service that there would still be a likely reliance by occupiers of the site on private vehicles, and I agree with the Council that the proposal would accordingly conflict with Policy CS7 of the Core Strategy 2011 (CS). Consequently, I do not find that there has been unreasonable behaviour resulting in unnecessary or wasted expense.
6. The second strand of the Council's reason for refusal broadly concerns the effect of the proposal on the edge of Little Maplestead and the character of the countryside. The Council advise that the Landscape Officer who did not object to the proposal was commenting from the perspective of Tree Preservation Order and hedge removal rather than wider landscape impact. In any event, consideration of the landscape and visual effects of development are matters of planning judgement and the Council would be entitled to reach a different view to its consultee provided there were sound reasons for doing so. The site is not subject to any specific designations, but that does not establish a lack of harm, and I find that the Council's evidence adequately substantiates its position, explaining clearly the basis for its concerns according to the circumstances of the site and with reference to relevant policies of the development plan. I have ultimately disagreed with the Council and found that the proposal would not result in urban sprawl or unacceptable ribbon development, but I do not consider that it behaved unreasonably in reaching the conclusion that it did in this regard.
7. In refusing the application, the Council cited Policies RLP2 of the Local Plan Review 2005 (LPR) and CS5 of the CS which generally restrict new development outside of defined development boundaries to uses appropriate within the countryside. These predate the Section 1 Local Plan 2021 (Section 1 LP) and the National Planning Policy Framework (the Framework). Nevertheless, they remain part of the development plan for the area, and the Framework explains that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework.
8. I have given reduced weight to the conflict with Policies RLP2 and CS5 within my decision. However, this reflects my findings that the location of development would not in this case harm the landscape, character or appearance of the area or the intrinsic character and beauty of the countryside.

I have already explained that I do not consider the Council behaved unreasonably in reaching a contrary conclusion and finding that there would be harm in this regard, and insofar as they seek broadly to manage patterns of development to protect landscape character and the amenity of the countryside, I consider that Policies RLP2 and CS5 as they apply in this case accord generally with similar objectives within the Framework. Given these factors, the Council's reliance on these policies in determining the application was justified.

9. At the time the Council determined the planning application, it accepted that it could not demonstrate a five year supply of housing. Consequently, the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework was engaged, and an assessment of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole was required. The concluding remark in the Council's delegated report does not refer explicitly to consideration of the policies of the Framework as a whole. Be that as it may, it is read in the context of the paragraphs above which clearly set out the requirements of the Framework. In my judgement when taken together with the report, there is a reasonable basis to substantiate its view that the benefits of the proposal would be outweighed in the context of paragraph 11(d).
10. I further note that Policy SP1 of the Section 1 LP which outlines a presumption in favour of sustainable development is listed as a policy consideration in the Council's report but not specifically discussed. Even so, in light of the above, I find that it was entitled to conclude that the proposal did not amount to 'sustainable development' in the terms of the Framework, and therefore this does not undermine its decision.
11. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR