



Costs Decision

Site visit made on 11 October 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Costs application in relation to Appeal Ref: APP/A1530/W/21/3267627 Land north of The Maltings, Mersea Road, Abberton CO5 7NR

- 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 Mrs Cohen for a full award of costs against Colchester Borough Council.
 - The appeal was against the refusal of planning permission for the erection of one dwelling.
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Decision

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

Reasons

2. There are two grounds for the claim. First, that in requiring the appellant to enter into a planning obligation the Local Planning Authority's (LPA) behaviour was unreasonable. Second, that the reason for refusal concerning the effect of the development on the setting of the listed building was unreasonable, unsound, and unsubstantiated.
3. The Government's Planning Practice Guidance (PPG) advises that 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. The PPG sets out examples of unreasonable behaviour which may give rise to a substantive award against an LPA. These include requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy; preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; as well as failure to produce evidence to substantiate each reason for refusal on appeal.
4. The LPA insisted on a financial contribution towards community facilities. While the sum sought was based on a published tariff, and a project was identified to the cost of which the sum would contribute, this was provided only at appeal stage, and there were no details provided about the nature, extent or costs of the project to justify the contribution sought. The Procedure Guide¹ sets out the evidence likely to be needed to enable an Inspector to assess whether an obligation meets the tests.
5. The LPA did not demonstrate that the contribution sought was necessary to make the development acceptable in planning terms, nor that it was fairly and reasonably related in scale and kind to the development, as set out in regulation

¹ Procedural Guide to Planning Appeals in England, annexe N3.3, The Planning Inspectorate, March 2021

122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework. I acknowledge the appeal decision² referred to by the Council. However, unlike this case, there was no evidence that I can see before that Inspector disputing the undertakings sought, nor was any undertaking completed. I determined the appeal in this case on its own merits. Therefore, in requiring the appellant to enter into a planning obligation for a financial contribution towards community facilities the LPA's behaviour was unreasonable.

6. Turning to the second ground, the delegated report clearly showed how the development was considered to be within the setting of the listed building and how the LPA thought the development would harm the significance of the building. While I found that the proposal would not diminish the character of its spatial setting or the historic significance of the listed building in the wider landscape, the LPA was not unreasonable in coming to its conclusion.
7. The LPA may not have dealt with the outline permission on land to the north. However, that site is further from the listed building and set further back from the road than the appeal proposal. The scale of that development, and the position of the site in relation to the listed building, offers no parallel or justification for the appeal proposal, were it needed. The LPA's report, which also addressed the apple store conversion, properly applied the statutory test, followed the steps in the Framework, and concluded against the development plan. These conclusions were amplified in its statement of case.
8. Whether the conservation officer visited the site or not, and whether they were shown recent photographs or knew the site from previous visits in the area, it was not their recommendation which led to the heritage reason for refusal. It was the planning officer's recommendation. Using their own skill, experience and judgement, they were able to take into account the conservation officer's consultation response alongside other representations, as well as their own impressions from a site visit, while having regard to the Act, the policies in the development plan and in the Framework.
9. The reason for refusal concerning the effect of the development on the setting of the listed building was not therefore unreasonable, unsubstantiated or unsound. There was no unreasonable behaviour on the part of the LPA in this regard.

Costs Order

10. 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 Colchester Borough Council shall pay to Mrs Cohen, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the third reason for refusal, specifically part (ii) community facilities; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Colchester Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Patrick Whelan
INSPECTOR

² Appeal Ref: APP/A1530/W/20/3257321