

Costs Decision

Site visit made on 16 March 2022

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCIArb MCIL

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Costs Application in relation to Appeal Ref: APP/A1530/W/21/3281012 Land adjacent to 'Heathcote Farm', Fox Street, Ardleigh CO7 7PS

- 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 J Clinch for a full award of costs against Colchester Borough Council.
 - The appeal was made against the refusal of planning permission for the construction of "two dwellings".
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Formal Decision

1. I refuse the application for an award of costs against Colchester Borough Council.

Submissions on behalf of Mrs J Clinch (the Appellant)

2. The appellant argues that the Council has failed to take account of the previous Inspector's decision and that, had they done so, it would have been obvious (in the Appellant's submission) that planning permission ought to have been granted. It is pointed out that an admitted error was made in the previous decision in relation to the Unilateral Undertaking that was submitted with that appeal and that this issue has now been resolved.
3. It has been claimed that there were "a number of inaccuracies" in the previous decision. It is, however, specifically argued that the previous Inspector did not find fault with the proposals in relation to their effect on the character and appearance of the area, and accessibility to public transport. It is also argued that the Inspector found that there would be only a "modest" conflict with Core Strategy Policies. The appellant asserts that the resolution of the Unilateral Undertaking overcomes all objections to the proposals
4. In consequence, the Appellant claims the entire costs of the appeal.

Submissions by Colchester Borough Council

5. The Council defends their refusal of planning permission, arguing that the officer's report on the planning application includes a careful analysis of the previous appeal decision. While acknowledging that the previous Inspector had made an error in respect of the Unilateral Undertaking, the officer's report notes the Inspector's conclusion that the project "would harm the integrity of

the Council's settlement strategy". The Council also maintain their view that "the proposed development is unsustainable", since its location is outside settlement boundaries, and that the scheme would result in "consolidation of ribbon development in a rural location".

6. In consequence, the Council claim that they acted reasonably in refusing planning permission and that no award of costs should be made.

Reasons

7. The 'Planning Practice Guidance' 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.
8. I share the Council's opinion that the previous Inspector's decision to dismiss the earlier appeal was not solely based on the erroneous interpretation of the Unilateral Undertaking. The decision also identified a conflict with the development strategy in the Development Plan and the then 'Emerging Local Plan' and this would also have been sufficient, in itself, to justify the refusal of planning permission.
9. I have concluded that the proposed development would fail to meet sustainability criteria, although I have disagreed with the previous Inspector in some respects, thereby strengthening the broader objections to the scheme that have also been maintained by the Council. I have also formed the opinion that actual harm would be caused to the character and appearance of the surroundings. The appeal has failed, therefore.
10. I accept that the Council had carefully considered the previous decision, taking due account of the acknowledged error, and I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the 'Planning Practice Guidance', has not been demonstrated. Hence, I have refused the application for costs against Colchester Borough Council.

Roger C. Shrimplin

INSPECTOR