



Costs Decision

Site visit made on 12 December 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Costs application in relation to Appeal Ref: APP/W1525/W/22/3293931 Land South West Of Pembroke House, London Road, Great Leighs, Chelmsford CM77 7QL

- 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 Omtech Services Limited.
 - The appeal was against the refusal of planning permission for a development described as Resubmission – Erection of 3 detached Passive house dwellings with associated garaging/cartlodges and new vehicular and pedestrian accesses.
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Decision

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

Reasons

2. Paragraph 16-028-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 16-053-20140306 of the PPG states that examples of unreasonable behaviour include where the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
4. The costs application sets out the grounds upon which the Council considers the appellant acted unreasonably. The Council is of the view that the appellant submitted an appeal for a proposal that is clearly not in accordance with the development plan having regard to its principle and impact upon character and appearance, despite pre-application advice and the refusal of other planning applications. The Council's application also alleges procedural unreasonable behaviour, given previous pre-application advice and refused applications.
5. Some of the refused applications and advice pre-date the adoption of the Chelmsford Local Plan (2020) (the CLP). Although a very similar proposal to this appeal proposal was refused in March 2021 subsequent to pre-application advice. This appeal proposal differs from the previously refused scheme by

virtue of some changes to the proposed materials, changing some gables to hipped gables and further information to address a highway reason for refusal.

6. The Council's reasons for refusal in respect of the location of the development and its effect upon the character and appearance of the area, and the reasoning for those findings are similar in the previous proposal to this appeal proposal. However, from the evidence before me, this appeal does not follow a recent appeal decision in respect of the same, or a very similar development (PPG ID Ref. 16-053-20140306).
7. The changes and additional information submitted with this appeal application seek to address the reasons the Council objected to the development. It is clear the highways reason for refusal has been addressed. The consideration of the effect upon the character and appearance of the area and the weight to be attributed to it can have a degree of subjectivity and is a matter of planning judgement. While ultimately, I do not agree with the appellant as a matter of planning judgement, I do not regard it as unreasonable behaviour to have submitted the appeal with reference to this issue having regard to the appellant's case.
8. The Council's case in respect of the location of the development is more fully reasoned in their appeal statement. The appellant's grounds of appeal amongst other things provides reasoning for Policy DM8 of the CLP not being fully consistent with paragraph 79 of the National Planning Policy Framework (2021). While I did not agree with the appellant in this regard for the reasons set out in my decision letter, this could have affected the weight given to the conflict with Policy DM8. The appellant also advances a number of positive material considerations, which need to be weighed in the planning balance, against any harms or conflicts that might have been found.
9. I have ultimately disagreed with some of the appellant's views and weight to be given to certain material considerations. However, based upon the evidence before me, I cannot conclude the appellant pursued an appeal that had no reasonable prospect of succeeding, or that no other material considerations such as national planning policy were advanced. Therefore, unreasonable behaviour that has resulted in unnecessary or wasted expense as described in the PPG is not demonstrated

Conclusion

10. For the reasons set out above, unreasonable behaviour that has resulted in unnecessary or wasted expense in the appeal process is not demonstrated.

Dan Szymanski

INSPECTOR