



Costs Decision

Site visit made on 15 November 2022

by C Shearing BA (Hons) MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Costs application in relation to Appeal Ref: APP/X1545/W/22/3302615 Hill House, Lower Burnham Road, Latchingdon, Essex CM3 6HG

- 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 and Mrs Barber for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for development described as 'the erection of one 1-bedroom dwelling (in lieu of prior approval for one x 1-bedroom dwelling, subject of application COUPA/MAP/21/00094)'.
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Decision

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

Reasons

2. Planning Practice Guidance (the PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably through amending the description of the proposed development, and failing to consider the alleged fallback position appropriately.

Description of Development

4. The Council described the reasons that it had amended the proposed description of development in its correspondence to the applicant dated 30 November 2021. This stated that, among other things, a description of development should only include the proposed development and should be easy for the public to understand. As the Council removed those parts of the description that did not describe development, I do not find that this was, in itself, unreasonable.
5. The PPG advises that the description should not be amended without the local planning authority first discussing the revised wording with the applicant or their agent. The evidence suggests that such a discussion did take place. While the main parties did not agree, I am satisfied that the requirements detailed in the PPG were met. There is no evidence of a delay to the validation of the application and consultation as a consequence of the Council's actions.
6. For these reasons, I do not find that unreasonable behaviour, as described in the PPG, was encountered in respect of this issue.

Consideration of the Fallback Position

7. The Council's officer report acknowledges that prior approval had previously been granted for the change of use of the existing building, and acknowledges that the planning history of the site is a material consideration. The report goes on to discuss that the weight to be given to a material consideration is a matter of judgement.
8. The officer report carries out a comparative exercise in respect of harm caused by the appeal scheme against the prior approval scheme. It finds that the proposed development was of larger scale and more residential in its appearance than the prior approval scheme. It also discusses the likelihood of the prior approval scheme being a real prospect as a fallback position.
9. For these reasons I am satisfied that the Council had due regard for the existence of the prior approval scheme, and appropriately considered its prospect as a fallback position. While I have not agreed with all aspects of its conclusions on those matters, the weight to be given to the fallback position is a matter for the decision maker. I do not consider that the Council were bound to accept the proposed increase in the size of the building in light of the evidenced case law, and the proposed change in the size was considered as part of its judgement. Overall, I do not find the Council acted contrary to the well-established case law evidenced.
10. I appreciate that the application process presented frustrations for the applicant, particularly as the officer's recommendation changed during the course of the application. However, the officer recommendation is part of the Council's decision making process and I do not consider this constituted unreasonable behaviour.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated. Therefore the application for costs is refused.

C Shearing

INSPECTOR