

Costs Decision

Site visit made on 10 January 2023

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2023

Costs application in relation to Appeal Ref: APP/X1545/W/21/3283976 Land adjacent The Willows, Bryants Lane, Woodham Mortimer CM9 6TB

- 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 Maldon District Council for a full award of costs against M & D Green.
 - The appeal was against the refusal of outline planning permission for 1 No. dwelling with carport.
-

Decision

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

Reasons

2. The application for costs seeks a full award on the basis that the appellant acted unreasonably by failing to respond to the outcome of a previous appeal decision for a comparable development on the same site, by only supplying relevant information at the appeal stage and by failing to provide a recognised payment mechanism in respect of mitigating adverse impacts on protected habitats (A RAMS payment). The application for an award of costs is therefore a combination of both substantive and procedural issues. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. PPG paragraph 16-053-20140306 sets out the scenarios where unreasonable behaviour by an appellant may give rise to a substantive award of costs. This includes, amongst other things, where an appeal follows a recent appeal decision in respect of the same, or very similar, development on the site where the Inspector decided the proposal was unacceptable and circumstances have not materially changed in the intervening period. Separately, PPG Paragraph 16-052-20140306 sets out the scenarios where unreasonable behaviour by an appellant may give rise to a procedural award of costs. This includes, amongst other things, only supplying relevant information at appeal when it was requested, but not provided, at application stage and a general resistance to providing information or material. The list at PPG paragraph 16-052-20140306 is not exhaustive.

4. The appeal site was subject to a previous appeal decision in 2015¹ in relation to an outline proposal for a single dwelling, with all matters reserved except for access. The 2015 appeal found that the site was not sustainably located and would result in unacceptable harm to the character and appearance of the area. Despite the LPA not being able to demonstrate a five year supply of deliverable housing land at that time, the 2015 appeal when engaging the tilted balance in the National Planning Policy Framework (NPPF) found that the limited benefits of the proposal would be significantly and demonstrably outweighed by the harms identified. The 2015 appeal predates the current situation in Maldon District regarding the Habitats Regulations and I can find no reference to local biodiversity considerations at the time of the 2015 appeal.
5. The 2021 proposal subject of the appeal decision that accompanies this costs decision is similarly in outline albeit with all matters reserved, including scale, appearance and landscaping. The appellants in their Design and Access Statement accompanying the proposal and in material accompanying the appeal have sought to explain how the proposal seeks to address the previous appeal decision, including mitigating the impact on the character and appearance of the area through potential design considerations. In this regard the appellant also refers to material changes in circumstance at the appeal location since 2015 including alterations at the adjacent dwelling at 'The Willows' and the equestrian development immediately to the north of the appeal site. Additionally, since the 2015 appeal the development plan has been updated, albeit the LPA remains unable to demonstrate a five year supply of deliverable housing land. Furthermore, the appellant as part of the application process provided further details regarding public transport provision in Woodham Mortimer in relation to the issue of sustainable location.
6. I have found in my separate appeal decision that, notwithstanding the appellant's latest evidence and submissions, on the main issues of sustainable location and character and appearance there would be significant harm in conflict with the current development plan. Nonetheless, there are a sufficient cumulative number of material changes in circumstance since the 2015 appeal which, in my view, gave the appellant reasonable grounds to test again whether the principle of a similar proposal would now be acceptable. These circumstances reflect a gap of approximately 5-6 years between the consideration of the two proposals, such that this is not a case of an appellant re-submitting without an appropriate intervening period.
7. Turning to procedural matters, the appellant submitted a Preliminary Ecological Assessment (PEA) during the appeal process. I have very few details about how or when a PEA was requested from the appellant or the extent to which the appellant resisted, if at all, the provision of such evidence in advance of the LPA making its decision. As such I do not consider the timing of the appellant's PEA amounts to unreasonable behaviour on procedural grounds. Similarly, the appellant in various documents expresses acquiescence to a RAMS payment. Whilst I have found that the appellant's suggestion of a negatively worded condition in this respect would not be justified there is generally little before me to indicate that the appellant has behaved unreasonably in this regard in the terms that would be justify or substantiate an award for costs.

¹ APP/X1545/W/15/3004090

8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.
9. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.