



Costs Decision

Site visit made on 13 December 2022

by C Shearing BA (Hons) MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Costs application in relation to Appeal Ref: APP/X1545/W/22/3293560 Land between Koombora and Mansfield, Victoria Road, Cold Norton CM3 6JD

- 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 W Hagan for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for erection of a self build detached dwelling complete with parking, landscaping and related infrastructure.
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Decision

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

Reasons

2. Planning Practice Guidance (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. The appellant considers that the Council's behaviour has been unreasonable for a number of reasons, and I shall discuss these in turn below.
3. The Council's appeal statement includes photographs taken during its site visit on 18 June 2021, during the course of the planning application. Based on those photographs, and the visibility of the site through the gates, I am satisfied that the Council had an adequate understanding of the conditions of the site at the time it assessed the application. I do not find the description of the site as 'overgrown scrubland' to have been wholly inaccurate based on the evidence. The site was clearly in a very different condition then compared to the photographs contained in the planning statement, dated April 2021, and subsequently repeated in the applicant's appeal statement.
4. While the officer's manager may not have visited the site, for the above reasons I am satisfied that there was an adequate understanding among the Council officers of the site conditions. The extent to which the existing site contributes to the overall character of the area is a matter of judgement and it is not uncommon that a different officer may take a different view on the acceptability of a development proposal. While it would have been frustrating for the applicant, this is part of the Council's decision making process.
5. The Council's officer report does not specifically consider the benefit of the proposal being a self-build development. Its appeal statement provides its rationale for this, explaining that there was a surplus of sites for self-build dwellings in the district compared to the identified need. While I do not have

further evidence on this matter from either party, I do not have a strong reason to dispute the Council's statements on this matter. Given those circumstances, it is apparent that, even if the officer report had addressed this issue more explicitly, it would have been unlikely to change the consequent outcome. While I have found that the proposal was not reliant on the benefit of being self build to be acceptable, I also note that there is not evidence of a mechanism or means of ensuring that the development was constructed as a self-build in any event.

6. The officer report reiterates the need for a balancing exercise in light of paragraph 11 of the National Planning Policy Framework (the Framework) and recognises the potential economic benefits of the proposal and ascribes weight accordingly, which is a matter of judgement.
7. In the absence of evidence of a definition of what constitutes 'infill development', this falls to be a matter of judgement. The officer's report considers this argument and adequately explains why it was not considered to be an infill development. I find the reasoning to be adequate and it is based on the facts of this particular case. As such I do not consider that the change in policy since 2014, arising from the adoption of policy H4 of the Maldon District Local Development Plan 2017 (the LDP), should necessarily have resulted in more support for the proposal.
8. The officer report adequately assesses the proposed development against policies S1 and D1 of the LDP. There is little analysis against policy S2, however the discussion in the report clearly relates in part to the criteria contained in policy S2 insofar as it relates to the district's natural and built environment. Policy S1, despite containing a presumption in favour of development, contains a number of key principles and the Council's assessment adequately explains why it considered the proposal to conflict with the policy as a whole.
9. The Council refer in its appeal statement to paragraph 80 of the Framework which relates to isolated homes in the countryside. This matter did not form part of the Council's refusal or discussion in its officer report. However, the extent of its reference did not introduce substantive new evidence to the appeal, nor did the Council suggest that this introduced a new reason for refusal. Based on the evidence before me, the reference to paragraph 80 did not cause extra expense by the appellant. As such this did not constitute unreasonable behaviour as defined by the PPG.
10. I have little evidence relating to the Council's actions after the refusal of the planning application, and the determination of a subsequent application which was refused.

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