
Costs Decision

Site visit made on 25 January 2023

by David Smith BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Costs application in relation to Appeal Ref: APP/A1530/W/21/3288712 Springfield, Station Road, Wakes Colne, CO6 2DS

- 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 & Mrs Tom Noble for a full award of costs against Colchester City Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of a garage and the erection of a single dwelling with access driveway and car parking.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. The applicants provided a number of appeal decisions at the planning application stage which indicated that the Council's policies did not prevent development beyond the settlement boundaries. However, whilst all of the submitted information is said to have been carefully analysed, the Council simply maintained that the proposal conflicted with previous and current policies because the site is outside the settlement.
4. The appeal decision at West Bergholt (Ref: APP/A1530/W/18/3211685) was made in August 2021 when the policy position was the same as it was when the appeal application was determined. At that time only Section 1 of the Colchester Borough Local Plan had been adopted. That Inspector concluded that the proposal for 26 dwellings outside the settlement would not conflict with Core Strategy policies which then remained in force. Furthermore, Policy SP3 of the Section 1 Plan expressly refers to development being accommodated within or adjoining settlements.
5. The Council should have made some acknowledgement of those other decisions, particularly the one at West Bergholt given that it was decided at a similar time. This is especially as the meaning of Policy SP3 is very clear and as the appeal site is immediately adjacent to the defined settlement. The Council did not attempt to address the question of whether the site was adjoining Wakes Colne. It also made no attempt to indicate why it took the approach that it did, notwithstanding the other appeal decision findings.

Overall its objection was not substantiated. Indeed, the impression is that the Council gave greater importance to the strict application of settlement boundaries than is justified by its own policies.

6. The Council also maintained that the proposed development would be contrary to paragraph 80 of the National Planning Policy Framework which seeks to avoid isolated dwellings in the countryside. However, no consideration was given to the judgment in *Braintree District Council v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610, as referred to by the applicants, which explains the lawful meaning of the word "isolated". As a result, no evidence was given to substantiate why the proposal would be isolated when considered against the legal definition.
7. Therefore, the stance taken by the Council in respect of the location of the proposed development was unreasonable, as it is not supported by relevant policies or caselaw.
8. Policy SS3 of the Section 2 Plan allocates 30 new dwellings to the south of the A1124. This site is considered to be well located relative to the existing facilities in Chappel and within walking distance of the train station at Wakes Colne. It is curious that this is not mentioned by the Council in its assessment of the accessibility of the appeal site to local services. However, that is essentially a matter of judgement and the Council highlighted its concern about the lack of a footpath along Station Road. As those living at the allocated site would not have to use Station Road to access most of the available facilities, it was not unreasonable for the Council to decide the matter as it did.
9. The objection on noise and disturbance grounds was briefly expressed. Nevertheless, it was reasonable for the Council to give consideration to the living conditions of adjoining occupiers. In the absence of any detailed technical evidence this was a matter for the Council to assess subjectively. Although I have taken a contrary view the position taken in this respect was not unreasonable given the proximity of vehicle movements to neighbouring properties and gardens.
10. The Council did not respond to the applicant's point that the Supplementary Planning Document (SPD) on *Backland and Infill Development* is now out of date. However, whilst the SPD was prepared under a previous national policy regime, it highlights issues that may arise from development of this kind and which were relevant to the appeal.
11. There has therefore been unreasonable behaviour but only in relation to the objection concerning the location of development. Even if the Council had behaved reasonably and not pursued that point, the application would still have been refused and the appeal lodged. Therefore a partial award of costs is warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Colchester City Council shall pay to Mr & Mrs Tom Noble, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in contesting those parts of reason for refusal 1 that relate to

the location of development (corresponding with the matters dealt with at paragraphs 6 – 8 of the appeal decision); such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Smith

INSPECTOR