



Costs Decision

Hearing held on 21 June 2023

Site visit made on 21 June 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Costs application in relation to Appeal Ref: APP/X1545/W/22/3308046 Land and buildings lying to the south of Maldon Road, Woodham Mortimer, CM9 6TF

- 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 Ms M Delaney for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for change of use of land for 2 Gypsy/Traveller pitches comprising the siting of 1 mobile home and 1 touring caravan per pitch.
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Decision

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

The submissions for Ms M Delaney

2. The costs application was made orally at the hearing. The applicant considered that the council behaved unreasonably in refusing the application and not accepting the officer's recommendation.
3. The applicant also considers that there was no basis for the third reason for refusal and that the reasons for refusal have not been supported by any evidence. This has result in an unnecessary appeal.

The response by Maldon District Council

4. The response was made orally at the hearing. The Council set out that the planning committee had chosen to refuse planning permission for the reasons set out within the decision notice, and the Planning Committee can make that decision.
5. The Council has stated the reasons for refusal and policies contained within the decision notices and during the appeal. They do not consider they have acted unreasonably during the course of the appeal.

The response by Ms M Delaney

6. The response was made orally at the hearing. The following additional points were made. The Council have failed to justify their reasons by giving any evidence. The lack of an appeal statement in particular has resulted in a lack of evidence and there has been no satisfactory explanation to support the reasons for refusal.

Reasons

7. 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.
8. It states examples of unreasonable behaviour include (i) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (ii) failure to produce evidence to substantiate each reason for refusal on appeal and (iii) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
9. The Council do not consider that they have behaved unreasonably and point out that the Planning Committee is entitled to come to an alternative view to the officers' recommendation. It is submitted that the Committee acted reasonably in weighing up the various aspects of the case.
10. I accept that the Council have correctly identified that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs. As the Committee were entitled to come to their own conclusions on the merits of the proposal.
11. Therefore, a key issue is whether the Council have provided sufficient evidence to substantiate their reasons for refusal at appeal. The first two reasons for refusal set out in the decision notice are complete, precise, specific and were relevant to the application. They also clearly state the policies that the proposal would be in conflict with.
12. However, the third reason for refusal, which sets out that there would be undue harm to residential amenity by reason of resultant noise levels and loss outlook, was neither specific or precise and in particular there was a lack of evidence provided as part of the appeal process to substantiate this reason for refusal.
13. The Council have failed to provide any evidence in relation to precise noise levels arising from the site during the time it was occupied. Furthermore, the Environmental Health officer representing the Council at the hearing confirmed that there was no objection to the proposal. They could also only provide limited evidence of complaints that had been received and it was necessary to rely on anecdotal evidence from residents present at the hearing. In any event this evidence was all produced orally and was not available to the applicant before the hearing.
14. In addition, the Council could not provide any detailed evidence to support their concerns around outlook, seemingly unclear as to which properties should be considered as having a loss of outlook and not providing any specific evidence to substantiate their concerns.
15. Particularly, given the officers recommendation was overturned at Planning Committee, the lack of an appeal statement meant that the applicant was disadvantaged in responding to the appeal, with the only evidence available to them being the brief minutes of that meeting.

16. I turn, then to the matter of wasted expense. In lodging the appeal, and in responding to the Council's reasons for refusal, the applicant has had to respond to the appeal with limited evidence from the Council and a degree of uncertainty as to the substantive evidence available, in particular in relation to the third reason for refusal. This has been in terms of the preparation of the statement of case, statement of common ground and the attendance at the appeal hearing.
17. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted in respect of the costs arising from providing a defence to the Council's third reason for refusal relating to undue harm to residential amenity of the neighbouring occupiers, by reason of both noise and outlook.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Ms M Delaney, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to matters associated with residential amenity of neighbouring occupiers, by reason of both noise and outlook; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Maldon District 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.

G Pannell

INSPECTOR