



Costs Decision

Site visit made on 31 August 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Costs application in relation to Appeal Ref: APP/J1535/W/22/3304703 Land East of 19 Orchard Way, Chigwell IG7 6EE

- 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 Mrs P Healy and Mr J Healy for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for the erection of a three storey building to provide 2 x 2 bedroom semi-detached houses with associated car parking, amenity space and landscaping.
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Decision

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

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 PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is 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.
4. Although it can be seen from my decision that I disagree with the Council's planning judgement and determination, it does not amount to unreasonable behaviour. The reasons for refusal as set out in the Council's decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the Epping Forest Local Plan that the Council considered the proposal would conflict with. Although since its decision the Council adopted a new local plan, they subsequently confirmed which policies were relevant to the appeal.
5. I accept that the Council's case as set out in their reasons for refusal is brief, however on the matters at hand, it is clear what their concerns with the proposed development were in relation to the Green Belt and the Epping Forest Special Area of Conservation (SAC). In this case, it does not amount to unreasonable behaviour.

6. The applicant has referred to previous indications made by the Council on how they might amend a previous scheme in order to give favourable consideration to a future (*this*) application. Whilst the conduct of the Council in their handling of a previous application is not before me, such discussions are almost always given without prejudice to the Council's formal decision. Indeed, the Council have referred to use of the phrase 'may be considered favourably' suggesting there can be no assurance or certainty. Whilst I acknowledge that in light of this indication, the subsequent course of action may be of frustration to the applicant, it does not amount to unreasonable behaviour.
7. The applicant considers that the Council's second reason for refusal was unreasonable as they were willing to submit the mitigation measures for the SAC as set out. The evidence shows that the mechanism for securing the appropriate mitigation was not in place at the time of the Council's decision. It was therefore not unreasonable for the Council to refuse planning permission for the lack of mitigation. Although the applicant had indicated they were willing to provide it, the fact remains that even if the mitigation was secured, the Council found the proposal to be unacceptable for other reasons. The mechanism for securing the mitigation was submitted with the appeal and I have taken it into account in my decision. As the requirement for mitigation is not in dispute by either party, the applicant was required to produce the necessary evidence in any event, and this has not resulted in wasted expense in the appeal process.
8. The applicant has referred to a lack of clarification on matters pertaining to the necessary mitigation measures in the form of financial contributions. I agree that the Council could have improved their handling of the matter in terms of responding to the applicant's queries, however, the expected mitigation measures are publicly available on the Council's website, and I therefore do not find unreasonable behaviour in this regard.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such I find that the applicant was not put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the proposed development.

Conclusion

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and a full award of costs is not warranted.

A M Nilsson

INSPECTOR