



Costs Decision

Site visit made on 21 September 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Costs application in relation to Appeal Ref: APP/X1545/W/22/3305283 Woodpeckers, 15 Mangapp Chase, Burnham-on-crouch, Essex, CM0 8QQ

- 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 David James of Approved Planning Services for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for demolition of existing outbuildings and erection of four 4 bedroom dwellings and a 3 bedroom dwelling.
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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 applicant's claim is on substantive grounds in that the Council has failed to provide adequate support for its first refusal reason relating to design issues and that the second reason on nature conservation mitigation could have been avoided if the Council had afforded opportunity for dialogue.
4. The Council point out that they did enter into dialogue with the applicant on design issues after refusal of the appeal proposal, resulting in a new permission (ref. 22/01069/FUL). The Council's strongest design criticisms of the appeal proposal related to plots 1 and 2 on the site frontage, yet the new permission includes the same side additions to which they previously objected. The Council's report on the new permission comments that the design and form of the dwellings on plots 3, 4 and 5 are "*very similar*" to that of the original permission for houses on the site (ref. 20/01288/FUL). In my judgement, the appeal proposal is also very similar to the new permission; the differences relate to roof treatments to plots 4 and 5 that I have determined insufficient to warrant refusal of the appeal proposal.
5. The Council also had an obligation to weigh the harm arising from their design concerns against the tilted balance at Paragraph 11(d) to the National Planning Policy Framework in view of the absence of a 5-year housing land supply. Their report on the new permission considers differences to the originally consented scheme, (and by inference, the appeal proposal) to be "*minor*". Yet the Framework's test is for any adverse impacts of granting permission to "*significantly and demonstrably*" outweigh the proposal's benefits when assessed against the policies of the Framework taken as a whole. The Council's assessment has failed to demonstrate this.

6. The Council's balancing exercise in its report on the appeal proposal comments that it does not have any affordable housing provision to weigh in its favour. Neither did the subsequent permission.
7. The Council has expressed concerns about the quality of the scheme being reduced because of rises in the costs of building materials. It has been able to manage those concerns using planning conditions on permissions granted. It could have done so on the appeal proposal.
8. In relation to the second refusal reason, it was apparent to the Council that mitigation of nature conservation concerns could have been addressed through a legal agreement, as they were in the appeal process. The Council's costs submission states that this was not sought as the "*application was not acceptable in other regards*". If the Council's assessment on design issues had been completed more thoroughly, the applicant could have been afforded the opportunity to satisfy the Council's requirements on the legal agreement.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 Maldon District Council shall pay to Mr David James of Approved Planning Services the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

Rory MacLeod

INSPECTOR