



## Costs Decision

Site visit made on 5 October 2023

**by L N Hughes BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2023**

### **Costs application in relation to Appeal Ref: APP/A1530/W/22/3309973 17 Station Road, Tiptree CO5 0AZ**

- 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 and Mrs Barker for a full award of costs against Colchester Borough Council.
- The appeal was against the refusal of planning permission for a two bed dwelling.

### **Decision**

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

### **Reasons**

2. 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. The PPG identifies that unreasonable behaviour includes vague, generalised, or inaccurate assertions which are unsupported by any objective analysis, failure to produce evidence to substantiate each reason for refusal, and the requirement to enter into a planning obligation which does not accord with the law or relevant national policy.
3. The applicants contend that the appeal was unnecessary for both procedural and substantive reasons, because of the Council's failure to demonstrate its case through inadequate evidence and justification, and failing to have regard to statutory legislation in respect of the provision of a financial contribution.
4. I do not find it unreasonable in this instance that the Council accepted the Highway Authority's advice without that Authority having undertaken a site visit. This is at its discretion based on the size and impact of the proposed development and the issues involved.
5. I find the officer's report provided sufficient evidence on the proposal's suggested harm to highway safety, including input from the Highway Authority and with reference to adopted policy. In particular, the Council gave great weight as a material consideration to the September 2021 dismissed appeal for a very similar proposal on the site<sup>1</sup>, for which the Inspector had already identified highway safety deficiencies. On this basis, it was therefore not unreasonable to conclude that the proposed layout and manoeuvring requirement would be unacceptable.
6. Overall, I gave more weight than the Council to the fallback position, but this is a matter of planning judgement. I also note that the plans submitted for the

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<sup>1</sup> APP/A1530/W/21/3267165

application were not particularly detailed in comparison to the current situation including the extent of the visibility splays and the set back of the parking areas, which the Highway Authority suggests had influenced its advice.

7. In order to assess the effect of the proposal on highway safety, it was also necessary and reasonable to consider the impact upon Firs Road despite it being a private road. The Council identified that this was an approach taken by the previous Inspector.
8. The Council did suggest that this private status meant that suitable conditions could not be imposed which would ensure sufficient parking and safe access arrangements. I found to the contrary, as I was unconvinced that there would be no prospects at all that the proposal could be achieved. However, even had the Council identified that such conditions would be possible, the evidence before me suggests that the application would still have been refused on highways grounds as outlined above. In the context of the applicant's need to address this in totality, I therefore find that specific wasted expense would not have been incurred on this matter, to the extent as to justify a costs award on this basis.
9. With relation to the financial contribution request towards community facilities and sports and recreation, the applicants contend that Council did not sufficiently identify the Abberton appeal and costs award examples<sup>2</sup> as a material consideration. However, that example states that the relevant project contribution was only identified at appeal stage, with no details provided, which is somewhat different to the current appeal. Furthermore, the site's previous appeal decision identified that the same contributions sought would meet the relevant tests for planning obligations. It was therefore reasonable for the Council to consider the Abberton decision to not be solely determinative, and to hold less weight in this regard than the site's prior appeal decision.
10. Although the Tiptree Parish Council minutes do not identify air conditioning or play equipment as a potential project, they also do not preclude that such projects are required. That the same football pitches have received payments from other sources, does not preclude the need for further improvements. An explicit preclusion of the ability to pool contributions within the Supplementary Planning Documents has not been presented to me. The project amendment since the initial request indicates to me that funding pressures may have changed during the lifetime of the application and appeal, but does not indicate that the statutory tests or the Community Infrastructure Levy Regulations have not been met.
11. Therefore overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*L N Hughes*

INSPECTOR

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<sup>2</sup> APP/A1530/W/21/3267627