



Costs Decision

Site visit made on 9 January 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2024

Costs application in relation to Appeal Ref: APP/A1530/W/23/3325312 Kenmore Lodge, Plummers Road, Fordham, Colchester, Essex CO6 3NR

- 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 S Forrest for a full award of costs against Colchester City Council.
- The appeal was against the refusal of planning permission for a development described as 'application for permission in principle for demolition of existing shed and development of single residential dwelling on previously developed land using existing access'.

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG)¹ states that an award of costs may only be made against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. In this instance the applicant alleges a substantive failing by the Council in respect of the decision taken to refuse the proposal.
3. The Council refused the proposal, in part, for a multifaceted reason linked to the appeal site's location outside the settlement boundary. This was found to be at odds with the spatial strategy, unsustainable in terms of access to services and facilities and harmful to the countryside.
4. Policy SP3 states that development will be accommodated at sites that adjoin settlements. The applicant asserts that Officers did not really grapple with this and applied the settlement boundary too strictly. Indeed, the assessment in the delegated report suggests that Policies SP1, SP3, SG1, SG2, ENV1 and DM15 of the Sections 1 and 2 Local Plan (LP) direct new residential development to sites within existing settlements. This is not overtly stated in the policies, but I do not take what Officers are saying to be them advancing a blanket ban on development adjacent to settlements.
5. This is because the policies listed above collectively seek to protect the landscape and locate development in sustainable locations. The settlement boundaries are the starting point for making such judgments as they would have been drawn with these aims in mind. Therefore, Officers' reference to development being directed to sites within settlement boundaries is reasonable. It is not as if they had said such development is required to be

¹ Paragraph: 030 Reference ID: 16-030-20140306

- within them. Therefore, the Council has not applied the settlement boundary in a stricter way than is justified by its own policies when read as a whole.
6. Moreover, Officers developed their argument by suggesting that there would be harm to the landscape and therefore a conflict with Policy OV2. The implication being that the scheme would be at odds with Policies SG1 and SP3 as well as part of a collective spatial strategy. I do not agree with the Council for the reasons set out in my decision, but I do not think it was an unreasonable finding given that it was properly explained, site specific and grounded in policy. Thus, the landscape concerns were properly justified.
 7. The Council's other main concern related to the sustainability of the site with reference to services and facilities. The assessment here lacked some clarity because it did not properly acknowledge the applicant's argument that, as a start point, the appeal site is located adjacent to a Tier 2 Sustainable Settlement as designated by the Council following careful analysis of factors such as the number of services and the quality of public transport (see the supporting text to Policies SS6 and SG1).
 8. Officers seemed to downplay the sustainability credentials of Fordham. Criticising the bus service and the walking distance of the appeal site from services and facilities, despite the latter being near identical to other properties set within the settlement boundary. Likewise, the Council took issue with a lack of a footpath north of Rams Farm Road, but this is the same situation for many other properties in the settlement boundary. It seems to me that if the Council's concerns are well founded then the settlement boundary should have stopped at Rams Farm Road. That said, the Council did provide cogent reasons explaining why it thought the appeal site was poorly located to services and facilities. After considering these I came to an 'on balance' finding which is a strong indicator that the argument was reasonable.
 9. The applicant is of the view that the Council should have specifically referred to appeal decision APP/A1530/W/21/3288712. It is an important principle of the planning system that like decisions are made in a like manner. However, as that appeal decision related to a site in a different village it is of little relevance to the appeal before me, the acceptability of which turns on the specific impacts in a local context. In any event, the decision was addressed by the Council in its Statement of Case.
 10. In respect of the RAMS payment, I take no issue with the Council's approach. Policy SP2 is clear that mitigation needs to be 'secured'. A condition cannot be imposed at the permission in principle stage and there is some doubt whether a planning obligation can be required either. The reason for refusal was entirely reasonable as permission in principle cannot be granted when the proposal would have a likely significant effect on a Habitat Site and mitigation has not been secured. My formal decision explains the pitfalls with a direct payment.

Conclusion

11. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

Graham Chamberlain
INSPECTOR