



Costs Decision

Site visit made on 13 February 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2024

Costs application in relation to Appeal Ref: APP/N1540/W/23/3326509 11 Mill Field, Harlow, Essex CM17 0BL

- 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 Ford for a full award of costs against Harlow District Council.
 - The appeal was against the refusal of the Council to grant planning permission for subdivision of site to create a separate plot for development as a two storey single family dwelling with gardens and off street parking for no less than two cars.
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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 applicant for costs considers, in summary, that the Council:
 - did not appropriately regard the application as an outline application and did not notify the applicant that they are unable to determine it unless further details were submitted within the prescribed period defined by Article 5(2) of the Town and Country Planning (General Development Procedure) (England) Order 2015 ('the Order'),
 - utilise its planning judgment appropriately in relation to the scale and nature of the development, or being mindful of site circumstances and the commentary of consultees, and
 - gave a reason for refusal without previously having raised this with the applicant for planning permission.
4. The Council registered the outline planning application (all matters reserved) as a valid submission on 4 April 2023. To comply with Article 5(2) of the Order, the Council were required to notify the applicant that they were unable to determine it unless further details are submitted (i.e. by providing information to 'remove' a reserved matter and enable it to be considered as part of the outline application). The Council did not make such notification. It did however request additional information relating to trees and access to enable it to determine the application.
5. It is important here to distinguish the difference between a notification pursuant to Article 5(2) of the Order and a request for information to enable

the Council to determine the application in a positive manner. From the evidence provided to me, there was, at no point, any suggestion by the Council that additional information should be provided to bring any of the reserved matters within the outline application's remit.

6. Nevertheless, I do accept that some of the requests by the Council may have been misguided given that siting and landscaping were reserved matters. Furthermore, a considered review of the site would have revealed the type, condition and relevance of the trees in question. Therefore, an arboricultural impact assessment could be regarded as somewhat excessive. Nevertheless, given the plans submitted, albeit as illustrative, I do not consider the request to be unreasonable.
7. Although access was listed as a reserved matter, the accessibility of the site can be an important issue in determining the principle of development. Such reasoning applies in this case. To comply with the requirements of the development plan, two parking spaces would be required for both the existing and proposed dwellings. The means of accessing these parking spaces is thus a fundamental issue in the assessment of the application as it affects the principle of the development. This has been borne out by my conclusions on this decision. Simply because a matter is reserved for subsequent approval, it does not infer that the implications of it can be set aside during the outline stage when it affects a matter of principle.
8. The Council's 'late' second reason for refusal that was not discussed with the applicant could have been avoided. This approach is not consistent with that which is advocated by the National Planning Policy Framework and related PPG. Nevertheless, were the Council minded to grant planning permission for the development, this could have resulted in a condition on a planning permission, and I have no reasons to conclude that it would not have done so.
9. Of itself, I consider that the second reason for refusal was unreasonable. However, this reason for refusal did not change the outcome of the application or this appeal and no, or minimal, additional expense has been incurred by the applicant.

Conclusion

10. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Nick Bowden

INSPECTOR