



Costs Decision

Site visit made on 22 January 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2024

Costs application in relation to Appeal Ref: APP/C1570/W/23/3323870 Land between Perrys and Rands, Rands Road, High Roding, Dunmow CM6 1NH

- 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 Chelsteen Developments Ltd for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of the Council to grant planning permission for erection of one no. detached dwelling, complete with all related works including upgrading of existing access.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. Unreasonable behaviour can be either substantive or procedural in nature. In this case, the application is made on both grounds.
3. The substantive grounds relate to the Council's handling and assessment of the application, and its decision to refuse planning permission despite providing a favourable response to the principle of the development in pre-application communications. However, pre-application discussions are made without prejudice to the Council's formal decision. Whilst I appreciate the applicant proceeded to make investment decisions and to fund a detailed planning application on the basis of the Council's response, they did so at their own risk.
4. It is not uncommon for a housing land supply position to shift during a planning application process and the assertion that the Council deliberately delayed determining the application to await an improved housing land supply position is unsubstantiated. I therefore do not consider it behaved unreasonably in this respect.
5. The case is made that the Council deliberately omitted some aspects of the advice given by its heritage officer. However, the full consultation response is a matter of public record and the officer report identified and justified the finding of less than substantial harm to the significance of designated heritage assets. Furthermore, whilst the officer report does not list all of the public benefits put forward by the applicant, it clearly references the social and economic benefits that were taken into account as public benefits. Consequently, I am satisfied

that the Council was able to substantiate its decision, including in respect of national policy.

6. The Framework does not refer to a scale of less than substantial harm and the Council did not behave unreasonably by not citing the 'low level' of less than substantial harm referred to by its consultee heritage officer. Any harm to a designated heritage asset carries great weight and deciding whether the weight of public benefits are sufficient to outweigh the harm is ultimately a matter of planning judgement. I therefore do not consider the Council behaved unreasonably in this matter. It will be seen from my decision letter that I took account of the persistent undersupply in housing land and still found that public benefits did not outweigh the harms identified.
7. In considering the housing land supply position, the Council referenced data that, at the time the application was determined, was unpublished. However, given the Council's statutory duties under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the provisions of the Framework, I am not convinced the outcome of the application would have been different had it been determined in a shorter timescale or had the Council only taken account of the published housing land supply data. Whilst the applicant may not agree with the Council's judgement on all aspects of its analysis of the proposal, this does not make its behaviour unreasonable.
8. The procedural grounds for the application relate to alleged inaccuracy in the Council's case and the perceived introduction of a new argument at appeal stage. That the Council could have communicated better with the applicant and that the officer's report included a number of inaccuracies is regrettable. The Council also misapplied Saved Policy ENV1 of the Uttlesford Local Plan (2005) (ULP), which concerns land in a conservation area. However, I am satisfied that the Council's decision making was not fundamentally flawed.
9. With the exception of Saved Policy ENV1 of the ULP, the reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. I do not agree that the Council made vague or generalised assertions. Rather, the Council substantiated its position with reasoned analysis. Therefore, even if the Council had behaved unreasonably on points of accuracy, including in respect of Saved Policy ENV1 of the ULP, the unreasonable behaviour would not have caused the applicant to incur wasted expense in the appeal process.
10. The Council's statement discusses the sustainability of the site location. However, I do not consider this to be the introduction of a new issue but, rather, elaboration on the reasoning for the third reason for refusal listed on the decision notice. Therefore, it was not unreasonable behaviour for the Council to make reference to these matters in its appeal statement.
11. Overall, having considered the facts and circumstances of the case, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated. The application for a full award of costs is therefore refused.

E Catchside
INSPECTOR