



Costs Decision

Site visit made on 24 April 2024

by David Smith BA(Hons) DMS MRTI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Costs application in relation to Appeal Ref: APP/X1545/W/23/3332515 Bickleigh Mead, Loamy Hill Road, Tolleshunt Major, CM9 8LS

- 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 J King for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for the construction of a replacement 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. In its letter of 29 January 2024, the Council confirmed that it was no longer able to defend two of the reasons for refusal. These concern the alleged non-compliance with Policy H4 of the Maldon District Local Development Plan which deals with replacement dwellings and to the urbanising impact of the proposal. The application for costs relates to the withdrawal of these reasons. The Council has provided no rebuttal to the application.
4. In relation to the first reason, the Council explained in the letter that this position was reached after a review of the submitted case law, photographs and a structural report. However, the initial structural appraisal of September 2021 accompanied the original application as did the site photographs. The applicant's appeal statement of case of November 2023 therefore contained no evidence in this respect that the Council had not seen before.
5. Furthermore, the appraisal contains clear observations to the effect that the mobile home and porch are integral elements that form the dwelling and that neither can be moved independently. The Council now accepts this. It is also agreed that the mobile home would most likely collapse if an attempt were made to move it and that it has a degree of permanence such that it complies with the relevant criterion in Policy H4. However, no comment is made about how the officer report reached different conclusions that contradicted the findings of the structural engineer.
6. The applicant's appeal statement did not include any case law but did refer, for the first time, to an appeal decision in Stockton-on-Tees. However, that case did not add anything new but rather dealt with similar issues and was

- submitted in support of the contentions being made. In itself, it did not justify a 'change of heart' on the part of the Council.
7. Although the Council's acceptance of the applicant's case is clearly welcomed by him, this was not done promptly after the lodging of the appeal. However, there were no cost implications arising from this. That said, the Council's original objection has not been substantiated and no rationale provided as to why the Council changed its position when the material before it was essentially the same. The imposition of the first reason for refusal was therefore unreasonable and the applicant had to deal with it unnecessarily in the appeal statement.
 8. Where planning permission is refused, Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that the notice must state clearly and precisely full reasons for the refusal. The second reason reiterated one of the grounds of an earlier refusal of planning permission and was therefore 'carried across' into the decision by mistake. In this instance, therefore, insufficient care was exercised in the production of the decision notice and, given its status as a formal document, this was unreasonable. As a result, the applicant was compelled to address it when he should not have been.
 9. As the application was refused for a third reason relating to flooding there would still have been a need to appeal, even if two of the reasons had been omitted. However, they were imposed unreasonably and so the applicant is entitled to be recompensed for the expense incurred in contesting them. Whilst much of the applicant's statement would have been required in any event, the case in response to reasons 1 and 2 in section 5 would have been superfluous if the Council had acted reasonably in the first place.
 10. Therefore, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of two of the reasons for refusal and a partial award of costs is therefore warranted.

Costs Order

11. 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 J King, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing relevant parts of section 5 of the statement of case prepared by Strutt & Parker and dated November 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

David Smith

INSPECTOR