

Costs Decisions

Site visit made on 13 May 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2024

Costs application in relation to Appeal A Ref: APP/W1525/W/23/3324658 The Dutch Barn North of Bury Farm, Bury Road, Pleshey, Chelmsford CM3 1HB

- 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 & Mrs Naomi & David Sheppard for either a partial or full award of costs against Chelmsford City Council.
- The appeal was against the refusal of planning permission for the replacement of 3.no dwellings (consented by application 20/00066/CUPAQ) with the erection of 1.no dwelling, access gates ancillary shed, solar PV array and an associated landscaping scheme, along the partial change of use from agricultural to residential.

Costs application in relation to Appeal B Ref: APP/W1525/W/23/3325747 Barn North of Bury Farm, Bury Road, Pleshey, Chelmsford, Essex CM3 1HB

- 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 & Mrs Naomi & David Sheppard for either a partial or full award of costs against Chelmsford City Council.
- The appeal was against the refusal of planning permission for the conversion of existing barn to 1.no. dwelling, with associated works including access gates, solar PV array and an associated landscaping scheme, along with partial change of use of land from agricultural to residential.

Decisions

1. The applications for awards of costs are 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 applicants have referred to the fallback position established by Class Q¹ approvals²³ to convert the existing agricultural building on the site of these appeals to 3 dwellings. The applicants contend that the Council acted unreasonably by disregarding the fallback position and giving it no weight in the determination of each planning application, particularly in light of the great weight given to a Class Q fallback development in the Bicknacre appeal⁴.

¹ Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.

² 20/00066/CUPAQ

³ 23/00159/CUPAQ

⁴ APP/W1525/W/21/3278018

4. In essence, the applicants' case is that the appeals and the cost of pursuing them would have been avoided had the Council properly considered the fallback position established by the relevant Class Q scheme and given it the correct weight in determining the planning applications.
5. In response, the Council contends that it took account of the relevant Class Q fallback position but found that it did not outweigh the harmful effects of the proposed developments in these appeals. Furthermore, it contends that the circumstances in these appeals are materially different and not directly comparable to the Bicknacre appeal.
6. The weight to be given to a fallback development is a matter for the decision maker, subject to reasonableness, as established by caselaw. In the evidence before me, the Council's Officer Reports explicitly refer to the fallback position established by the relevant Class Q scheme, and the material differences between its design, and the designs of the proposed dwellings in these appeals. The Council's Officer Reports set out detailed assessments of the respective impacts of the schemes the subject of these appeals, and the Class Q scheme, on the character and appearance of the area, and the settings of the listed buildings.
7. Although resting primarily on design matters, which are often subjective, the Council's assessments include a sufficiently detailed analysis justifying why it found the harm that would be caused by the proposed developments in these appeals would be materially worse than the Class Q fallback scheme. In the case of the Appeal A proposal, it took account of the likelihood of the Class Q scheme, which was extant at the time, being completed within the statutory timescale.
8. For these reasons, I am satisfied that the Council adequately assessed each appeal scheme against the fallback position, and clearly evidenced this assessment in its Officer Reports. As such, its conclusion that the schemes in these appeals would have comparatively worse effects than the Class Q scheme, such that the fallback development did not weigh in their favour, were adequately justified and were not unreasonable.
9. In the Bicknacre appeal scheme the dispute focussed on the accessibility of the development to public transport, and the availability of services and facilities to meet the day-to-day needs of future occupiers. The evidence indicates that the proposed dwelling in the Bicknacre appeal and the Class Q fallback scheme were more or less in the same location relative to those accessibility factors.
10. The circumstances in the Bicknacre appeal were therefore materially different to the disputed matters in the appeals before me, which focussed on their effects on the character and appearance of the area, and the settings of the listed buildings. Consequently, it does not follow that the same great weight should have been afforded to the Class Q fallback position in the appeals before me.
11. On the evidence before me, I am satisfied that the Council had due regard to the Class Q fallback development and did not disregard it, and its decision to give it no weight was adequately reasoned. Even if the Council had explicitly apportioned some weight to the relevant Class Q fallback scheme, such as the

limited weight set out in the Officer Report⁵ to the Appeal B scheme, it is highly unlikely, based on the Council's assessments of the relative effects of the schemes in these appeals when compared to the Class Q fallback development, that the appeals would have been avoided. Therefore, the applicants would have had to defend the reasons for refusal and the necessary expense in so doing.

12. I conclude for the reasons given above that unreasonable behaviour resulting in unnecessary or wasted expense in the terms set out in the PPG has not occurred and an award of costs is not warranted.

G Sylvester

INSPECTOR

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