



Costs Decision

Site visit made on 5 June 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/23/3332000 Woodpecker Barn, Mill Lane, Cressing, Essex CM77 8NU

- 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 Ian Nixon for a full award of costs against Braintree District Council.
- The appeal was against the refusal of planning permission for erection of two detached self-build or custom-build dwellings with garaging and access.

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 contends that the Council has acted unreasonably in persisting with its objections to the proposal as it subsequently granted permission on a site at Polecat Road for a similar form of development just four weeks before it submitted its statement of case for the current appeal. The applicant adds that it wrote to the Council prior to the determination of the application setting out the policy position, relevant case law and the fact that the Council at that time was unable to demonstrate a five year supply of deliverable housing sites. It is argued that the Council ignored these arguments at the time, only to later apply the same policies as the applicant had set out in his letter when determining the later application at Polecat Road.
4. In addition, the applicant alleges that the Council has failed to substantiate its reason for refusal relating to the effect on the character and appearance of the area, pointing out that its objection is solely to the principle of development, with no case made as to why any form of development on the appeal site would result in material harm to the character and appearance of the area.
5. The Council in response states that in the application at Polecat Road, the proposal gained support under Policy 7 of the Cressing Neighbourhood Plan (CNP) as it met the relevant criteria, whereas the proposal subject to the current appeal did not. It maintains that it has applied development plan policies consistently and treated each application on its own merits, which includes differences in location.
6. I am not provided with the appellant's correspondence to the Council during the application process, nor any response that may have been made. The

submissions are limited to the officer report and site plan for the application at Polecat Road. My main decision shows I do not agree with the Council on the likelihood of new residents contributing to the future viability and sustainability of the village, but this is a matter of judgement taking in a number of factors including accessibility by various modes of transport and the Council has set out its position in these respects in its evidence.

7. This aside, the principal difference in reasoning between the two proposals appears to relate to the effects on character and appearance. Here, there are inevitable differences between the two sites and the assessment again involves planning judgement taking into account necessarily subjective elements. The Council has provided reasons to substantiate its position regarding the effect on the character and appearance of the area, including reference to encroachment into the countryside and effect on the relevant landscape character area. I have not agreed with the Council in my main decision, but I find it has substantiated its position in this respect.
8. Ultimately, the Council's different findings with respect to character and appearance led in large part to its conclusions that one proposal accorded with Policy 7 of the CNP and the other did not. This in turn led to different overall conclusions on the acceptability of the proposal with the overall spatial strategy. On the evidence before me, there were sufficient differences in the particulars of each case, and various matters requiring planning judgement, that I am satisfied that the Council did not fail to determine similar cases in a consistent manner.

Conclusion

9. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

K Savage

INSPECTOR