



Costs Decision

Hearing held on 3 July 2024

Site visit made on 3 July 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Costs application in relation to Appeal Ref: APP/J1535/W/24/3342459 2 Courtland Drive, Chigwell, Essex IG7 6PN

- 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 John Digwa (Megabay Ltd) for a partial award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and replacement with two structures containing a total of 5 new dwellings.
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Decision

1. The application for an award of costs is refused.

Preliminary Matters

2. At the hearing, the applicant clarified that a partial award of costs was being applied for. The applicant also set out that the costs application related only to the Council's behaviour in respect to the second reason for refusal and that point 3 of the costs application should be disregarded. I have determined the costs application on this basis.

Reasons

3. 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.
4. Amongst other matters, the Council's second reason for refusal refers to the use of the proposed development as flats. At the hearing, the Council emphasised that it was the effects of the flattened accommodation proposed upon the area's character which contributed significantly to its decision to refuse planning permission.
5. The Council's decision notice for the previously refused development for 5 flats¹ did not refer to the use of the building. Consequently, whilst in the subsequently dismissed appeal a main issue for the Inspector was the effects of the development upon the character and appearance of the area, it seems to me that the effect of the building's use was not a very determinative factor. The development allowed at appeal in March 2023 was for a single dwelling only, not flats.

¹ Planning application reference EPF/1573/20

6. In each of the March 2023 appeal decisions² the Inspector understood that the adopted development plan in force was the Epping Forest District Local Plan Alterations (July 2006). Accordingly, I can only conclude that the policies of that local plan must have had a strong influence upon their decisions. As this plan was superseded by the Epping Forest District Local Plan 2011-2033 Part One, in the formal decision, it is not necessary for me to assess the proposal against those policies.
7. Furthermore, since the appeal decisions of March 2023, the National Planning Policy Framework (the Framework) has been revised. This has included a degree of greater emphasis placed upon the delivery of beautiful places.
8. Therefore, some material planning policy changes have arisen since the March 2023 appeal decisions. Whilst previous appeal decisions are material considerations which the Council should consider, equally, each subsequent planning application should be considered on the evidence and in accordance with the development plan in force. The Council's objections to the effects of this appeal proposal deviate from those raised in relation to the earlier schemes. Altogether, this means that there are contextual differences between the proposal the subject of this appeal and those the subject of the earlier appeal decisions. Given this, I do not find that the Council has unreasonably persisted in its objections to the redevelopment of the site nor that it has failed to have proper regard to the extant planning permission for a replacement dwelling.
9. Appraising the effects of a development upon the character and appearance of an area is a matter of judgement. The Council has considered the proposal against the development plan now in force, against the Framework and has considered that it fails to accord with relevant development plan policies. It can be seen from the formal decision that I do not agree with the Council, however, it was not unreasonable of the Council to come to the opposing view. I find that the Council has adequately substantiated its reason for refusal in relation to character and appearance.
10. I have been referred to the Council's administrative errors which led to judicial review proceedings, but it has not been clearly demonstrated to me that this directly led to unnecessary or wasted expense in the appeal process.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred, and an award of costs is not warranted.

H Jones

INSPECTOR

² Appeal decision references APP/J1535/W/22/3305279 and APP/J1535/W/22/3293378