



Costs Decision

Site visit made on 13 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2024

Costs application in relation to Appeal Ref: APP/W1525/W/23/3335751 116 Maldon Road, Danbury, Chelmsford, Essex CM3 4RA

- 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 Chelmsford City Council for a full award of costs against Mr James Barnes, Sunbury (Country Homes).
 - The appeal was against the refusal of planning permission for demolition of existing residential dwelling and replacement with four dwellings with associated car parking and private amenity space.
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Decision

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

Reasons

2. The Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG advises that cost awards may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The Council states that the appellant exhibited unreasonable behaviour in submitting new information as part of the appeal evidence. This is because it is not the purpose of the appeals process for the Council to consider additional information. The new ecological information required the Council to re-consult an external ecologist, which was at the Council's expense. The Council also state that the appellant submitted an incomplete planning application which did not include all the relevant ecology information.
4. The Inspectorate's Procedural Guide: Planning appeals – England (2024) discusses an Inspector's approach to dealing with additional information once an appeal has been made. Section 16 explains that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially the same scheme that was considered by the Local Planning Authority and interested parties at the application stage. The guidance then explains that any amendments will be tested against the '*Holborn Studios Ltd v The Council of the London Borough of Hackney*' judgement. This requires consideration as to whether the changes are substantial and whether accepting them would cause procedural unfairness.
5. In relation to the ecological information, I am unconvinced that the appeal proposal has 'evolved' for the purposes of Section 16, as the additional

information would not materially change the proposal. Instead, the ecological information was of a technical nature and only added layers of new information to established ecological survey work. I therefore see no evidence that taking this new information into account would cause procedural unfairness.

6. In relation to whether the application was incomplete due to the lack of ecological information, I note that the Council accepted and validated the planning application. Had the Council considered the application to be incomplete at the time of validation, they could have chosen not to validate it until the additional information had been submitted. This would likely have avoided the requirement to consult the external ecologist on multiple occasions.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for costs is refused.

B Pattison

INSPECTOR