



Costs Decision

Site visit made on 24 September 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Costs application in relation to Appeal Ref: APP/A1530/W/23/3330823 Land at Swallowfield Glamping Pods, Heath Road, Eight Ash Green, Colchester CO3 9TN

- 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 Warren for a full award of costs against Colchester City Council.
 - The appeal was against the refusal of planning permission for the development proposed is described as the demolition of stable and erection of a single dwelling and garage.
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Decision

1. The application for an award of costs is allowed in part 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. Paragraph 049¹ of the PPG highlights the examples of unreasonable behaviour by Local Planning Authorities where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that it has delayed development which should clearly be permitted; failed to produce evidence and substantiate its reasons for refusal; acting contrary to, or not following, well-established case law; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable and not determining similar cases in a consistent manner.
4. In dismissing the previous appeal² at Swallowfield Glamping Pods, the Inspector found that the proposal would cause harm to the character and appearance of the surrounding area. However, the Inspector also found that whilst there was a presumption against development outside the settlement boundary of Eight Ash Green, this did not preclude development adjoining the existing settlement. In reaching his decision the Inspector had had regard to relevant case law in respect to the meaning of adjoining³ and concluded the proposal was neither isolated⁴ nor in an unsustainable location.
5. Nevertheless, the Council continues to disagree with the previous Inspector's conclusions on this issue. Whilst the Council state that the Inspector's

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

² PINS Ref: APP/A1530/W/22/3295728

³ Corbett v Cornwall Council [2022] EWCA Civ 1069

⁴ Braintree District Council v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

comments on the previous appeal have been "*carefully noted and analysed*", from the evidence before me, there appears to be little investigation or examination of the relevant case law by the Council, in justifying their continued opposition to this issue. Instead, the Council appear to continue to rely heavily on their local plan policies, which were also before the previous Inspector at the time of his decision. In my view, there would need to be a material change in circumstances that would justify the Council's continued objection on these grounds.

6. I acknowledge that new information has been submitted as part of this appeal, which includes other appeal decisions received in the authority on similar sites. These may not have been available at the time of the previous appeal. Nevertheless, given the limited information provided on these sites, I cannot be certain they are directly comparable, and I have given them limited weight.
7. In any event, I find that the circumstances in respect to the suitability of the site, having regard to the accessibility of services and facilities, and national and local policy remains unchanged to that previously considered at this location. As such, based on the evidence presented, there has not been a material change in circumstances on this matter. This amounts to unreasonable behaviour.
8. However, there has been material change in circumstance in the impact on character and appearance at the appeal site, given the location of the proposed dwelling has been moved forward to front Heath Road. Also, the scale, design and footprint of the proposal has been altered from the previously dismissed scheme. Whilst I have reached a different decision to that of the Council in respect to the current appeal scheme and its effects on the character and appearance of the area, I find that the Council considered the pertinent factors and that the second reason for refusal was rational and based on relevant issues. Therefore, the Council did not prevent development that should clearly be permitted.
9. Overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 the Colchester City Council shall pay to Mr John Warren the costs of the appeal proceedings, more particularly described in the heading of this decision, limited to those incurred in contesting the first reason for refusal.
11. The applicant is now invited to submit to the Colchester City Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Naylor

INSPECTOR