The Planning Inspectorate

Costs Decision

Site visit made on 23 October 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2024

Costs application in relation to Appeal Ref: APP/X1545/W/24/3341719
6 & 8 Alamein Road, Burnham on Crouch CM0 8JH

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 Stephen Foster for a full award of costs against Maldon District Council.
- The appeal was against the refusal of planning permission for development described as 'Construction of new 2 bedroom, 2 storey end of terrace house attached to no. 6 Alamein Road. New dwelling would be in keeping with existing houses in the terrace/street'.

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 appellant alleges that the Council behaved unreasonably by failing to exercise appropriate consistency with similar developments nearby. A lack of discussion prior to the Council's decision is also cited as having contributed to the need for an appeal to be submitted, with associated costs in terms of lost earnings and employing a professional adviser to present the appellant's case.

4. Although the Officer Report refers to discussions having taken place, the Council has subsequently acknowledged that there were no such discussions. Nevertheless, the Council maintains additional discussions could not reasonably have led to a different outcome and that its decision took adequate account of the context around the appeal site, including other developments nearby.

5. Substantive arguments have been presented by both main parties to the appeal. Based on the evidence provided, the appellant fundamentally disagrees with the Council's view of the spacing of dwellings along the street and any similarities with other developments, notably the detached dwelling opposite. As such, there is no clear reason to conclude that there would have been a different outcome, or that he would have elected not to appeal, had the Council entered into further discussion prior to the application being decided.

6. Although the information supporting the planning application drew comparison with the detached dwelling opposite, much of the appellant's evidence about gaps between other properties was submitted for the first time with the appeal. Therefore, it was not unreasonable that the Officer Report did not analyse

those specific properties in depth, or that the Council's Statement of Case expanded on the relevance of the corner properties, in response to those highlighted in the grounds of appeal.

7. The Officer Report adequately describes the character of the street scene and the effect of the proposed development on it. There is no substantive evidence that the Officer's assessment was unduly influenced by any compliance issues at the new dwelling opposite. For the reasons set out in my decision letter, I have concluded that the Council's decision was not inconsistent with other decisions and developments nearby, when the different layout and context for those developments is taken into account.

8. The requirement for mitigation of likely significant effects on European Sites is a somewhat technical matter and the appellant was reliant on the Council to explain the implications of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), the requirement for a financial contribution to mitigate the effect on European Sites and the mechanism for securing this through a Unilateral Undertaking. However, the PPG confirms that submission of a planning obligation, such as the Unilateral Undertaking required in this case, should not normally be a requirement for validation of a planning application, and that the requirement for such an obligation to mitigate any undesirable impact of the development should generally be negotiated during the consideration of the application.

9. The Officer Report explains that the reason the requirement for a financial contribution secured through a Unilateral Undertaking was not discussed prior to the decision was that the application was being refused for other reasons. However, the required mitigation measures are briefly summarised in the Officer Report, and the Council has also published a RAMS Supplementary Planning Document explaining the process. As such, the required information was reasonably available to the appellant and his adviser, to help them address this matter. Furthermore, there is no evidence that any unnecessary or wasted expense has been incurred through the appeal process, as a result of the appellant being unfamiliar with the mechanism for addressing the second reason for refusal.

10. For the reasons set out above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Jane Smith

INSPECTOR