



Costs Decision

Site visit made on 24 September 2024

by **K Williams MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th February 2025

Costs application in relation to Appeal Ref: APP/X1545/W/23/3333081

Land at and rear of 9 Church Road, Wickham Bishops, Essex, CM8 3LA

- 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 Mazdev Ltd for a partial or full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for the demolition of 9 Church Road, creation of new access and the development of up to 50 dwellings including associated car parking, open space and landscaping.
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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 PPG sets out examples of behaviour by local planning authorities which may give rise to an award of costs¹. The applicant asserts that in this case the Council failed to determine the case in a consistent manner to an earlier application, failed to produce evidence to substantiate each reason for refusal and was vague, generalised or inaccurate in its assertions about a proposal's impact, unsupported by any objective analysis and that it introduced fresh evidence at appeal.
4. The proposal was for a similar development which was subject of a previous dismissed appeal scheme². The previous Inspector was explicit³ that the proposal would be in accordance with policies S1 and D1 of the Maldon District Approved Local Development Plan 2014 – 2019, adopted July 2017 (the Local Plan). However, the critical issues for the previous Inspector related to the location of the development being in conflict with Policy S8 of the Local Plan. The Council's first reason for refusal clearly gives primacy to this matter.
5. The Council Members in this case were entitled not to accept the professional advice of Officers, provided that a case could be made for the contrary view. As can be seen by my decision, the wider issues considered are ones of planning judgement, taking into account material considerations. In this case, the Wickham Bishops Neighbourhood Plan 2016 – 2029 (the Neighbourhood Plan) made 2021

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

² Appeal Ref: APP/X1545/W/16/3152640 Decision Date 18th December 2017.

³ Paragraph 31 of appeal decision Appeal Ref: APP/X1545/W/16/3152640

was adopted. Although I have not fully agreed with the Council and interested parties on the conflict with these policies this is a material change in circumstance. In my view this could reasonably warrant a differing viewpoint on the purported harms given the role of Neighbourhood Plans in shaping the visions for areas and community aspirations.

6. The Council's officer report and appeal statement provides some degree of specific, reasoned, objective analysis of the schemes impact. The need for contributions within the planning obligation made under section 106 of the Town and Country Planning Act 1990 (as amended) (s106) can also be clearly attributed to the various Local Plan Policy and the Neighbourhood Plan policies listed in the reasons for refusal.
7. The Council has not disputed that there is an affordable housing need in the district, and therefore did not seek to provide substantive evidence to dispute this. However I find that the main dispute in this respect was the absence of the planning obligation as a means to secure the affordable housing, other obligations and contributions. It is not unusual for Council's to maintain the absence of a s106 as reason for refusal before it is prepared. Nor is it unusual to maintain this position at appeal until it has been executed. Although I agree it was not particularly helpful to not provide commentary on the adequacy of the s106 when submitted, the Council subsequently confirmed in their costs rebuttal it had been received and was satisfactory.
8. Thus, as a matter of fact and degree, I am satisfied that the Council has provided sufficient evidence to substantiate its reason for refusal and the assertions about the proposals impact were adequate. Unreasonable behaviour has not been demonstrated in this regard. From the evidence I have before me, I am satisfied that the Council considered all of the pertinent factors, including the detailed comments from Wickham Bishops Parish Council and was able to substantiate its reasons for refusal.
9. Although the Council's Statement of Case referred to conflict with Local Plan Policy SP2, it was not cited in the Council's decision notice. However, its inclusion within the Council's statement does not in my view amount to fresh or substantial evidence given the applicants previous involvement with the appeal site, the extensive public interest and appeal decisions. It can be seen from my decision that I disagreed that this policy should be disregarded. The evidence provided by the applicant in the form of the recent appeal decision 3331398 in the same District highlighted the relevance of Local Plan Policy S2. In any event the applicants' case did not involve any significant additional assessment, only a short rebuttal to the Council's statement on this matter.
10. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. Nor that an appeal could have been avoided.

Conclusion

11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Williams

INSPECTOR