
Costs Decision

Site visit made on 18 February 2025

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 March 2025

Costs application in relation to Appeal Ref: APP/A1530/W/24/3349929 Land to the rear of 3 Highfield Drive, Lexden, Colchester CO3 3QA

- 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 Marguerite Haddrell for a full award of costs against Colchester Borough Council.
 - The appeal was against the refusal of an application for planning permission for the demolition of the double garage, relocation of existing car parking and creation of a three bedroom detached house and a garage.
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Decision

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

Reasons

2. Planning Practice Guidance 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 or wasted expense in the appeal process.
3. In this case, the appellant argues that the Council acted unreasonably in not approving the application for a two-storey house when a single storey bungalow had already been approved on the site, and secondly that the lack of a unilateral undertaking did not warrant a reason for refusal as the necessary financial contributions could have been secured by condition.
4. The visual impact of a two-storey house on the site would be noticeably greater than a single storey dwelling and the relative merits of the former are therefore a matter of planning judgement. Whilst the appeal has been allowed, the Council put forward a credible and clear cut case and it was not unreasonable to pursue the matter at appeal.
5. With regard to securing necessary financial contributions, Planning Practice Guidance¹ advises that a positively worded condition requiring the appellant to enter into a planning obligation is unlikely to pass the test of enforceability. On the other hand a negatively worded condition is only appropriate in exceptional circumstances where the delivery of the development would otherwise be at serious risk. Such a risk does not arise in this case.

¹ Planning Practice Guidance Paragraph: 010 Reference ID: 21a-010-20190723

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

David Reed

INSPECTOR