Planning Inspectorate

Costs Decision

Site visit made on 3 June 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Costs application in relation to Appeal Ref: APP/A1530/W/24/3357825
2 Creffield Road, Colchester, Essex CO3 3JB

- 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 Nigel O'Brien on behalf of OBW Holdings Limited for a full award of costs against Colchester City Council.
- The appeal was against the refusal of planning permission for is change of use of ground and first floor into 7-bedroom HMO (sui generis) including rear dormer window and rebuilding of existing rear outrigger and rear boundary wall.

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. Paragraph 049 of the PPG provides examples of types of behaviour which may give rise to a substantive award against a local planning authority[1]. These examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and not determining similar cases in a consistent manner.

4. The applicant suggests the Council behaved unreasonably, asserting the proposal would accord with the development plan and the reasons for refusal are not substantiated and unsupported by objective analysis; that mitigation of the developments impacts on European sites could be dealt with through planning condition; and the proposal was not determined in a similar manner to other Houses in Multiple Occupation (HMO) schemes.

5. As set out in my decision, I found the proposal would provide unsatisfactory living conditions for future occupants and would provide inadequate cycle storage,

[1] Paragraph: 049 Reference ID: 16-049-20140306

resulting in conflict with the development plan as a whole. Therefore, the Council did not prevent development that should clearly be permitted.

6. Each of the reasons for refusal is substantiated by a reasoned assessment contained within the Council's delegated report.

7. It is evident from the Council's submissions that it was aware of the site's planning history and permitted development rights, and it considered the fallback position to be less harmful than the proposal.

8. Whilst the Local Highway Authority did not object to the proposal, it does not normally comment on the provision of on-site parking. The Council assessed the proposal against the area's adopted parking standards.

9. The Council's assessment found the proposal would have an overall harmful effect on the character of the conservation area, and it considered the benefits of the proposal would not outweigh the harm to this heritage asset. The assessment of such matters requires the decision-maker exercise professional judgement. Whilst in my decision I reached a different conclusion, I do not consider that the Council failed to properly evaluate the proposal or consider its merits.

10. The Council identified requirements for developer contributions toward sport and community facilities based on a reasoned judgement. Whilst I was not satisfied the obligations would meet the statutory tests, the applicant provided no mechanism to secure financial contributions such as a unilateral undertaking, and thus did not incur wasted expense.

11. The applicant asserts other similar developments were not required to provide financial contributions toward sport and community facilities. Whether a planning obligation may be sought is influenced by a range of factors such as the available capacity of infrastructure, which may differ between areas and over time. I have not been provided with details of other HMO developments. However, the differing circumstances of proposals does not equate to inconsistency in decision-making.

12. The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) require that permission may only be granted after having ascertained that it will not affect the integrity of a European site. The Council's Habitats Regulation Assessment concluded the proposal would have likely significant effects on European sites. The Council did not conclude that suitable conditions would enable the proposed development to go ahead.

13. Rather, the Council identified opportunity to mitigate the impacts of the development through a financial contribution toward the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). However, the applicant provided no direct payment or planning obligation toward the RAMS.

14. The applicant suggests a planning condition could be imposed to require the proposal satisfy the RAMS scheme by securing either a financial contribution or alternative provision of mitigation. However, this approach would be imprecise regarding the type, nature, and timescale for habitat mitigation, thereby introducing significant uncertainty. Such a condition would be counter to the precautionary approach required by the Habitats Regulations. Therefore, the Council did not refuse planning permission on grounds capable of being dealt with by conditions.

15. As set out above, the proposal would conflict with the development plan and the Council did not therefore prevent development that should clearly be permitted. Whilst in my decision I have reached different conclusions on certain matters, I am satisfied the Council's reasons for refusal were based on reasoned judgement and analysis. The evidence before me does not suggest the Council determined the proposal in an inconsistent manner. The Council did not refuse planning permission on grounds capable of being dealt with by conditions, since the Habitat Regulations would not support mitigation through a planning condition in this circumstance.

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

E Dade

INSPECTOR