



Costs Decision

Site visit made on 8 August 2025

by **Jonathan Price BA(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Costs application in relation to Appeal Ref: APP/A1530/W/25/3365037

Land adjacent 6 Marlowe Way, Colchester CO3 4JP

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Lin for a full award of costs against Colchester City Council.
 - The appeal was against the refusal by the Council of planning permission for change of use of highway land to amenity land and repositioned public footway.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Awards may either be procedural in regard to behaviour in relation to completing the appeal process or substantive in relation to the planning merits of the appeal.
3. This application makes a case for a substantive award of costs, on three grounds. Firstly, the Council had refused planning permission despite the lack of an objection from the local highway authority (LHA). The lack of an objection from a highway and transportation perspective would not indicate this proposal was either necessary or beneficial in this regard, nor that the proposal was otherwise acceptable on planning grounds. The Council's decision was based on the loss of amenity resulting from repositioning the footway, which would not have depended on a supporting objection from the LHA, and so this was not substantively unreasonable.
4. Secondly, the costs application contends that the planning refusal reflected unsubstantiated concerns over the footway construction harming protected trees through the incursion within their root protection areas (RPA). The appellant had relied on a Tree Report produced in support of an earlier proposal for a dwelling, and so additional costs had not been incurred in this respect. Whilst this was a professional Tree Report, from a reputable source, it had nonetheless relied on standard construction methods within the RPA for mitigating harm to protected trees. It had not assessed the implications of any detailed specifications for constructing a footway to an adoptable standard. I do not consider it reasonable to expect the Council's arboricultural evidence to be at the same level of detail as that of the applicants'. In my view, the Council's refusal reason was on a justifiably precautionary basis, following internal arboricultural advice, given the very close

proximity of the proposed footway to the protected trees. Again, the decision reason was not substantively unreasonable in this regard.

5. The third substantive ground for a costs award relates to the development plan policy basis for the Council's decision. It is argued that the alleged conflict with Policy DM17 had no foundation whatsoever based on the repositioned footpath failing to achieve an improvement to the character of the site. However, my appeal decision found conflict with this policy, in respect of this seeking to protect and enhance the existing network of green links. Therefore, I do not find there to be a substantively unreasonable policy basis for the Council's decision that had then led to the appeal.
6. I have considered the examples given in PPG paragraph 49 of the types of behaviour which may give rise to a substantive costs award against the Council and am satisfied none would be entirely applicable. My overall view is that the Council refused a proposal which was not in accordance with development plan policy, with no material considerations including national policy indicating that planning permission should have been granted. Therefore, based on PPG paragraph 50, there should generally be no grounds for an award of costs, which is the conclusion I have reached.

Jonathan Price

INSPECTOR