
Costs Decision

Site visit made on 6 November 2025

by Ms Beloe MSc DIC BSc (Hons) CSci CEnv C.WEM MCIWEM

an Inspector appointed by the Secretary of State

Decision date: 25 November 2025

Costs application in relation to Appeal Ref: APP/A1530/W/25/3372612

Land south of Colchester Road, West Bergholt CO6 3TJ

- 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 S Laver (WB Nightingale Ltd) for a full award of costs against Colchester City Council.
 - The appeal was against the refusal of planning permission for the erection of three new dwellings and associated infrastructure.
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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. Unreasonable behaviour on the part of a local planning authority may 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, acting contrary to, or not following, well-established case law, or not determining similar cases in a consistent manner.
4. The applicant contends that the Council's behaviour in all three refusal reasons and its approach to the planning balance, was unreasonable. The Council responded directly to the application for costs, stating that it did not consider that it has acted unreasonably in any way and had provided reasoning behind each reason for refusal. The applicant asserts that the Council has been inconsistent in its approach to substantiate coalescence harm, relying on the West Bergholt Neighbourhood Plan Policy PP12 over the Preferred Options Local Plan (February 2025).
5. I have found in my appeal decision that as the Preferred Options Local Plan (February 2025) is an emerging Local Plan which has not yet been examined, it can only be given limited weight. This issue was a matter of planning judgement, and the Council set out its reasoning for reaching a conclusion in its determination of the application. While I do not agree with the Council's conclusion on the particular issue of coalescence, I do not consider that the Council acted unreasonably in refusing permission.

6. The applicant contends the Council's criticism of the design in respect of the gable widths, orientation of the proposed development and effect on the living conditions of the occupants of existing neighbouring properties was unsubstantiated, citing aspects of the Colchester Borough Council's Backland and Infill Development Supplementary Planning Document.
7. It will be seen from my decision that I agree with the Council that there were sufficient grounds for refusing planning permission related to the harm to character and appearance of the area and effect on the living conditions of occupants of existing neighbouring properties. It follows that I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal.
8. The applicant asserts that the Council failed to properly apply the planning balance under the National Planning Policy Framework (the Framework). It will be seen from my decision that I did not consider that I had sufficient information from either party to come to a firm conclusion on whether or not paragraph 11(d) of the Framework would be invoked. However, if it were invoked, I concluded that the effect on the character and appearance of the area and to the living conditions of occupants of adjacent properties and future occupiers of the proposed dwellings, would conflict with policies of the Framework and would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, I cannot agree that the Council has acted unreasonably in this case.
9. The applicant suggests the Council's behaviour was unreasonable in relation to its consideration of aspects relating to contamination which could have been controlled by a condition. It will be seen from my decision that I agree with the Council that a contamination risk assessment should have been provided at the application stage, particularly given the previous and current agricultural use of the land, which could for example, have involved the use or storage of chemicals. The Council have stated in their cost rebuttal that the provision of this study is standard practice for dwelling applications. It is therefore not unreasonable for the Council to have included the lack of this assessment as part of its reason for refusal. By the appeal stage, the Council had further information which was provided in relation to another application on this site, which only now, means that the residual matters could have been dealt with via a condition.
10. The applicant also suggests the Council's behaviour was unreasonable in relation to planning obligations in the form of a unilateral undertaking (UU). It is common that additional work is needed at the appeal stage in providing or updating a finalised UU so it is fit for purpose in the event an appeal is allowed. This is therefore a normal and necessary cost within the bounds of the normal application or appeal process. Therefore, I cannot agree that the Council acted unreasonably.

Conclusion

11. In view of the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, an award of costs is not justified against the Council.

Ms Beloe

INSPECTOR