
Costs Decision

Site visit made on 15 August 2016

by Zoe Raygen Dip URP MRTPI

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

Decision date: 25th October 2016

Costs application in relation to Appeal Ref: APP/X1545/W/16/3147228 Land south of allotments, Maldon Road, Goldhanger, Essex CM9 8BE

- 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 D J Bunting & Son for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for outline planning application with all matters reserved for the construction of 10 dwellings with associated off street parking.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The National Planning Practice Guidance (PPG) 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 the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and if it fails to produce evidence to substantiate each reason for refusal on appeal.
 4. The application was refused for two reasons. The partial award of costs is sought in relation to the reason for refusal with regard to the lack of provision for affordable housing either on site or a financial contribution.
 5. There was some dispute between the parties as to which Policy should have been used to calculate the provision. The Council relied on the emerging Policy within the Pre-submission Local Development Plan 2014-2029 Consultation (the LDP). However, the applicant considers that that Policy within the adopted Maldon District Replacement Local Plan 2005 (the Local Plan) is more relevant.
 6. Irrespective of the Policy to be applied a Court of Appeal judgement on 11 May 2016 upheld the Secretary of State's appeal on all grounds relating to the High Court judgement in *R (on the application of West Berkshire District Council and Reading Borough Council) v SSCLG* [2015] EWHC 2222 (Admin) on 31 July 2015. As a consequence, a Written Ministerial Statement published on 28 November 2014 and Planning Practice Guidance (PPG) are material
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considerations that set out Government policy defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought for small scale development.

7. The Council maintain that the likely floor space of the 10 houses would be above 1000 square metres and therefore the proposal would not fall under the threshold stated in the PPG for which affordable housing contributions should not be sought. In coming to this conclusion the Council rely on information within the applicants appeal statement and the Central Government (DCLG) 'Technical Housing Standards – Nationally described space standards' regarding the likely size of the properties. However, the proposal is in outline form for ten dwellings, the layout plan being indicative only. There is no certainty therefore of the size or design of the houses. Accordingly, in my appeal decision I found that it could not be concluded that an affordable housing requirement was in accordance with either adopted or emerging Policy.
8. In the light of my findings I find it unreasonable therefore that the Council pursued this matter as a reason for refusal. I appreciate that the applicant would still have had to submit an appeal in relation to the other reason for refusal. The work in association with the reason for refusal regarding affordable housing incurred extra costs and an award in these specific respects is justified.

Other matter

9. I have had regard to the Costs decision APP/X1545/W/16/3148929 brought to my attention by the applicant. However, I am not aware of the nature of the cases brought by the Council and the applicant in respect of this application for costs. I have therefore treated this application on its own merits.

Conclusion

10. I therefore conclude that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to D J Bunting & Son, the costs of the appeal proceedings described in the heading of this decision limited to the those costs incurred in arguing against the Council's requirement regarding the provision of affordable housing or a financial contribution.
12. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed

Zoe Raygen

INSPECTOR