
Costs Decision

Site visit made on 6 July 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 2 December 2016

Costs application in relation to Appeal Ref: APP/X1545/W/16/3147983 Land north of Beckingham Road, Tolleshunt D'Arcy, Essex CM9 8TU

- 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 Robinson and Hall LLP for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of the Council grant planning permission for the construction of 10 dwellings with associated off street parking.
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Decision

1. The application for a partial award of costs is allowed.

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant asserts that the Council's failed to substantiate the second reason for refusal (RR2). This referred to Policy H1 of the pre-submission Local Development Plan, which requires affordable housing to be provided on sites of five units or more, or greater than 0.5 hectares in area. In determining the appeal I attached only limited weight to this policy as the examination into that document has not yet concluded.
4. The Council's appeal statement also referred to Policy H9 of the Maldon District Replacement Local Plan (2005), but that policy does not have a requirement for affordable housing to be provided on sites of 10 units or less. Furthermore, whilst the Council's statement of 1 June 2016 acknowledged the Court of Appeal judgement¹ which confirmed that contributions for affordable housing should not be sought from small scale developments of ten units or less, or with a gross maximum floorspace greater than 1,000 sq m, the Council maintained its objection in relation to RR2.
5. In addition, the Council's statement introduced a further concern that the proposal would be likely to result in a development with a gross maximum floorspace greater than 1,000 sq m. However, the design of the scheme including layout and scale are reserved for future consideration, and although the Council has referred to the layout provided by the appellant on the site

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441 – 11 May 2016

plan, in connection with its adopted parking standards and the Government's nationally described space standard, this is only one way in which the development might be implemented. Consequently, in relation to RR2, the proposal is in compliance with national and development plan policy and should clearly be permitted.

6. I therefore conclude that the Council behaved unreasonably in objecting to the scheme on the basis of an absence of affordable housing provision, and in maintaining this objection in the light of the Court of Appeal judgement. This unreasonable behaviour led to the applicant incurring unnecessary or wasted expense in addressing this matter at appeal, as described in paragraph 49 of the PPG, and thus a partial award is justified to cover the related expenditure.

Costs Order

7. 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 on that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Robinson and Hall LLP the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending arguments relating to affordable housing provision.
8. 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.

Claire Victory

INSPECTOR