
Costs Decision

Site visit made on 4 October 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 07 December 2016

Costs application in relation to Appeal Ref: APP/J1535/W/16/3152224 Bridge House, Roding Road, Loughton, Essex IG10 3ED

- 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 Mrs Rekha Galot for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing house and erection of 3 two bedroom and 3 one bedroom flats in three storey block.
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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 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 4. The Appellant submits that the Council has acted unreasonably in that it had failed to provide evidence to substantiate their reasons for refusal at appeal in relation to the alternative sites, and that they failed to follow the approach required in assessing the sequential test having regard to the National Planning Policy Framework (the Framework), the PPG and the associated Environment Agency guidance. This also led to vague, generalised and inaccurate assertions.
 5. In addition to the above, it is stated that no evidence was submitted to demonstrate why the flood resilient measures outlined in the Flood Risk Assessment (FRA) were inadequate, or were not capable of being dealt with by planning condition. Furthermore, no consideration was given to the supply of housing as the Council cannot demonstrate a five year supply of deliverable housing sites, with no balancing of the planning merits being undertaken.
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6. Whilst I found that the documents used to identify sites for the sequential test were dated, in not submitting an appeal statement to support their case, the Council relied upon the officer's committee report and in particular the three large sites where housing may be located (Queens Road, Buckhurst Hill; Loughton car park, Old Station Road; and Debden car park, Chigwell Lane).
7. The smallest of these sites is anticipated to accommodate 55 dwellings, which is of a scale far in excess of the appeal development. Whilst these sites could clearly accommodate the appeal development on part of the site, there is no evidence to demonstrate that this would be feasible or a realistic prospect, bringing significant doubt as to whether any of these would be available as an alternative to the appeal site. On this basis, the Council failed to provide convincing evidence in relation to the sites that they relied upon and an award of costs is therefore justified.
8. In relation to the adequacy of the FRA, this is not considered at all in the report to committee, nor is the generally positive response of the Council's Engineering, Drainage and Water team reported either in full or in summary form. Given that no evidence, other than the supportive comments of the Engineering, Drainage and Water team have been provided to me, I can only conclude that any outstanding matters could have been addressed through suitably worded planning conditions.
9. Finally, the officer's report does not consider the Council's position in relation to a five year housing land supply and the provisions of the Framework. Given my conclusions on the flood risk issue I have not found it necessary to undertake a balancing exercise of the planning merits of the proposal. However, in refusing the application, the Council should have considered the benefits of additional housing as part of such a balancing exercise. However, this was not undertaken by the Council.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to all of the above issues and therefore a full 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 Epping Forest District Council shall pay to Mrs Rekha Galot, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Epping Forest 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.

Chris Forrett

INSPECTOR