The Planning Inspectorate

Costs Decision

Site visit made on 22 November 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 23 December 2016

Costs application in relation to Appeal Ref: APP/P1560/W/16/3151169
Land west of Heckford's Road, Great Bentley, Colchester, Essex CO7 8RR

- 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 Welbeck Strategic Land II LLP, M MacDonald, R MacDonald and R L MacDonald for a full award of costs against Tendring District Council.
- The appeal was made against the refusal of planning permission for the erection of up to 50 dwellings together with open space, landscaping, sustainable drainage and vehicular/pedestrian accesses from Heckford's Road.

Decision

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

Reasons

2. 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. The applicant has applied for an award of costs based on the Council's unreasonable behaviour in, first, not determining similar cases in a consistent manner, second, relying on vague, generalised or inaccurate assertions in support of its position and, third, preventing development which should have been permitted in accordance with national policy and other material considerations. The applicant, therefore, incurred wasted expense in pursuing an appeal which should not have been necessary.

3. Planning permission was granted for a development of 50 dwellings at Admirals Farm (application ref 16/00133/OUT) at the same committee meeting which refused the appeal proposal. Both schemes proposed a footpath link on same section of Heckford's Road. I recognise that the Council's concerns regarding the appeal proposal include a number of matters which would also apply the Admirals Farm scheme.

4. However, I understand that the Admirals Farm proposal included additional land which allowed for a wider footpath that, in the Council's view, reduced the risk to pedestrian safety. This is a material difference between the two schemes and I consider that the Council was entitled to reach a different conclusion with regard to the risk posed to pedestrian safety. As such, I find that the Council did not behave unreasonably in relation to the first ground.

5. The appellant also advises that a revised scheme for the appeal site includes a footpath proposal which is similar to the Admirals Farm scheme, but which has

nevertheless been refused planning permission. However, the revised scheme is not before me and, therefore, I cannot take it into account.

6. The Council's decision was made contrary to the advice of its officers and in the absence of an objection from the highway authority. I also understand that a highway authority officer attended the planning committee site visit and answered members' questions. Whilst Councils are not bound to follow the recommendations of its officers, PPG paragraph reference ID: 16-049-20140306 advises that they will be at risk of an award of costs if they fail to produce evidence to substantiate a reason for refusal or rely on vague, generalised or inaccurate assertions about a proposal's impact.

7. The appellant's evidence included a Transport Assessment and information and analysis on traffic speeds, walking times and the volume of pedestrians using the footpath, driver forward visibility on the bend, speed reduction proposals and reference to relevant guidance in Manual for Streets. The Council's evidence rightly points to the need to ensure pedestrian safety and refers to relevant development plan and national policies. The evidence also sets out what it considers to be the potential risks arising from the proposed footpath. However, it does not provide a systematic assessment of those risks or support its position by reference to specific guidance or standards. There is nothing to suggest that the evidence has been informed by the advice of a professional highway engineer or safety specialist.

8. It is also appears to be contradictory. It finds that the distance between the pinch point on the footpath and the point at which it would become visible to drivers using Heckford's Road is within the reasonable stopping distance for a vehicle travelling at the legal speed limit, but then goes on to state without qualification that 'There is consequently a genuine risk to pedestrians passing through the pinch point in the event of stepping into the carriageway at a time when cars are heading towards that bend.'

9. The decision notice states that the pinch point in the footpath would be around 27m long. This was disputed in the appellant's evidence, but the point is not addressed in the Council's evidence. This raises a doubt over the Council's understanding of the proposal.

10. Consequently, I find that the Council did not adequately support its position at the appeal and, therefore, did not meet the requirements of PPG paragraph reference ID: 16-049-20140306.

11. The Council accepts that it cannot demonstrate a five year supply of housing land and that relevant policies for the supply of housing are out of date. The appeal proposal would deliver up to 50 dwellings including affordable housing and should, therefore, have been considered in the context of the presumption in favour of sustainable development set out in Framework paragraph 14. The Council's only concern regarding the proposal was pedestrian safety and, whilst the reason for refusal cited Policy TR3a of the Tendring District Local Plan and paragraph 32 of the National Planning Policy Framework, I have found that it did not adequately support its position on this issue. Therefore, I consider that the Council prevented development which should have been permitted, having regard to its accordance with national policy and other relevant considerations. The Council, therefore, acted contrary to PPG paragraph reference ID: 16-049-20140306.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Tendring District Council shall pay to Welbeck Strategic Land II LLP, M MacDonald, R MacDonald and R L MacDonald the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

14. The applicant is now invited to submit to Tendring 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.

Simon Warder

INSPECTOR