
Costs Decision

Hearing held on 22 November 2016

Site visit made on 22 November 2016

by L Fleming BSc (Hons) MRTPI

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

Decision date: 03 January 2017

Costs application in relation to Appeal Ref: APP/X1545/W/16/3150788 Tillingham Hall Farm, North Street, Tillingham, Essex CM0 7ST

- 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 Maldon District Council for a partial award of costs against The Dean and Chapter of St Pauls Cathedral.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of redundant agricultural buildings and the erection of 21no detached, semi-detached and terraced dwellings (including 2no. bungalows) with associated garages, parking areas, gardens, new vehicular and pedestrian access from North Street and associated external works and landscaping.
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Decision

1. The application for costs is refused.

The submissions for Maldon District Council

2. The application by the Council was made in writing at the Hearing. It is submitted that the appellant has behaved unreasonably and caused the Council to incur unnecessary and wasted expense by preparing the appeal documentation and attendance at the Hearing.
3. The Council contends that the appellant has failed to provide any substantive evidence as to why affordable housing cannot be provided on site as part of the development. Moreover, it is alleged that the fact the appellant has provided a planning obligation which provides affordable housing on site demonstrates that it can be.
4. It is also alleged that the level of contribution proposed by the appellant is significantly lower than that requested by the Council without justification.

The response on behalf of the appellant

5. The appellants representative, was given time to consider a response to the claim. He orally indicated that the relevant planning obligations were submitted to the Planning Inspectorate and copied to the Council on 11 November 2016 and no correspondence had been received from the Council on either of them.
 6. He advised that discussions have been on going with the Council about the appeal scheme and a previous scheme on the same site since 2012. During
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which it was alleged the Council have consistently encouraged a contribution towards the provision of affordable housing off site instead of provision on site.

7. With regard to the higher contribution figure requested by the Council, it is alleged that this was only recently requested and no clear justification for it was provided by the Council.

Reasons

8. 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.
9. Having reviewed the correspondence between the Council and the appellant, it seems to me that prior to the Council's decision a contribution towards the provision of affordable housing off site was always preferred by both parties to provision on site. This is clearly reflected in the Officer Committee Report which recommended the appeal scheme for approval.
10. Whilst the Council is not obliged to follow the recommendations of its Officers, when the Committee resolved to refuse planning permission, this would have been the first time the appellant would have been made aware of the Council's preference for provision of affordable housing on site as part of the development.
11. In response, even though the appellant has not put forward any detailed evidence to justify either on site or off site provision of affordable housing, two separate planning obligations have been submitted, one of which effectively overcomes the Council's objections to the scheme in this regard. Furthermore, whilst the level of contribution provided by the appellant towards off site provision is disputed. The Council have not provided a clear justification for the higher figure.
12. Nevertheless, I have found through discussion at the Hearing the amount of affordable housing requested by the Council and proposed by the appellant is contrary to the requirements of saved Policy H9 of Maldon District Replacement Local Plan (2005) without appropriate justification from either the Council or the appellant. Thus, even if detailed evidence had been provided by the appellant to justify the proposed contributions, it does not directly follow that the Hearing would have been avoidable.
13. Overall, I find the appellant has acted reasonably in seeking to meet the Council's expectations and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not therefore justified.

L Fleming

INSPECTOR