
Costs Decision

Site visit made on 25 June 2019

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2019

Costs application in relation to Appeal Ref: APP/P1560/W/19/3225929 Land adjacent to 28 Ashlyns Road, Frinton-on-Sea

- 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 Mr and Mrs Smith for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for a dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the National Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The National Planning Practice Guidance also highlights that an example of unreasonable behaviour is a failure to substantiate a reason for the refusal of planning permission.
3. The appellant considers that the Council failed to have regard to a previous decision to grant planning permission on the site; that references to density are inappropriate; that although the proposed dwelling would have a smaller garden than the previously permitted scheme, no evidence has been provided regarding harm; and that the Council failed to recognise improvements to the character of Ashlyns Road and Upper Second Avenue arising from the revised proposal.
4. I note that the Council has clearly defined differences between the previously permitted scheme and the appeal proposal. Owing to the changes in siting and design, the appeal proposal amounts to a different scheme. The Council has, in its reason for refusal and Statement of Case, substantiated the perceived harm that would arise from these differences. I also note that the reason for refusal is a matter of planning judgement and that each application is to be considered on its own merits.
5. Whilst I have had regard to the extant planning permission, I note that in the appeal scheme, the proposed dwelling would be sited closer to the existing house. This results in a denser form of development owing to the concentration of built form within a smaller area. The Council has drawn my attention to Policy FW5 of the Tendring District Local Plan (2007). This policy specifically references the importance of density in assessing development proposals

within 'The Avenues' area of Frinton-on-Sea. In addition, I acknowledge that the preamble to this policy places particular importance upon the role corner plots play in defining the area's character. Therefore, the Council's conclusions were supported by planning policy.

6. In respect of the reduced garden size, the Council has highlighted that the appeal proposal would result in a reduction in space between the existing and new dwellings. The Council has explained why it believes that this would reduce the level of spaciousness surrounding both buildings, resulting in perceived harm to the character and appearance of the area. Accordingly, I find that this element of the Council's refusal reason to be properly substantiated.
7. I recognise that the Council's reason for refusal and Statement of Case does not specifically reference any perceived benefits of the increase in set back of the appeal proposal from the highway edge, when compared to the previously permitted scheme. However, I find that as the Council has clearly identified the applicable planning policies and has explained how it perceives that these policies have been breached, there is no evidence of unreasonable behaviour.
8. I have noted the recommendation of the Council's Officers and that the Council's Planning Committee reached a different view regarding the proposal. However, members of the Planning Committee are entitled not to accept the professional advice of Officers, provided that a case can be made for the contrasting view. For the preceding reasons, I believe that the Council's reason for refusal was properly substantiated and that the appellant was not put to unnecessary or wasted expense. Therefore, an award of costs is not justified.

Conclusion

9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the National Planning Practice Guidance, has not been demonstrated.

Benjamin Clarke

INSPECTOR