



Costs Decision

Site visit made on 14 May 2019

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Costs application in relation to Appeal Ref: APP/Z1510/W/18/3217084 Former Hunwicks Engineering Site, land adjacent 32 & 34 Kings Road, Halstead, CO9 1HA

- 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 AR Clarke (Builders) Ltd for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for construction of seven dwellings comprising four x three bed houses, two x 2 bed houses and one x 1 bed flat.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. The applicant alleges that the Council has behaved unreasonably with respect to the substance of the matter under appeal by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development, national policy and other material considerations. The applicant submits their complaint under five bullet points, which I summarise and then address in the order presented.

The Council did not recognise the highly sustainable nature of the site in its application of car parking standards and the proposal almost meets those standards in any event

4. The Council acknowledges the sustainable location of the site in the 'planning balance' section of its officer's report. They also reference the 'nature of Kings Road in this location' where considering the amount of parking proposed. I am satisfied that, whilst the conclusions reached on this matter by the Council were different to my own, that they appear to have considered both the merits or otherwise of the location and the number of spaces proposed, relative to the standard that they were applying, when carrying out their assessment. Accordingly, I do not consider that the Council has acted unreasonably in this respect.

The Council did not recognise that the Essex Design Guide allows for a more pragmatic approach to amenity space where narrow, terraced housing is proposed

5. The Design Guide acknowledges that narrow fronted houses might result in narrow, long gardens that may be undesirable. But rather than suggest that this should lead to a reduction in the amount of garden area provided at these types of properties, it suggests that the use of these house types should be minimised. Accordingly, I find that the Council has not behaved unreasonably by failing to apply a lesser amenity space standard on the grounds of the design of the houses.

The Council did not recognise that the proximity of public open space could have resulted in a lower amenity space standard being applied

6. The Council utilised the Essex Design Guide standards in their assessment of the amount of garden space provided at the site, which they were entitled to do. Those standards clearly describe that there are circumstances where a lesser amount of garden space than the 100m² standard may be appropriate. One of those exceptions is where houses face a substantial area of well landscaped and properly maintained open space. The site is opposite a large public area of open space that appeared to me to be landscaped and maintained.
7. Neither the officer's report nor the Council's Statement make any reference to this aspect of the Design Guide, which is clearly relevant to the circumstances of the case. Given the proximity of the site to the park and the case that the Council was pursuing, this matter should have been addressed one way or the other. The absence of any form of analysis of the point gives me the impression that it may not have been properly considered. If it had been, it may be that the Council would have reached a different conclusion on the matter, avoiding the need for the applicant to address it in their submissions. The applicant addressed the matter in their Statement and so the Council had an opportunity to respond but did not do so. Accordingly, I consider that on this matter, the Council has behaved unreasonably and that unnecessary or wasted expense has occurred.

The Council placed undue weight on the Nationally Described Housing Standards

8. The Council does not have a development plan policy that requires compliance with the Nationally Described Standards. I do not consider that this means that that they cannot make reference to them, or even use them as a starting point for understanding whether the quality of accommodation proposed is acceptable. In this case, however, the application of the Standards by the Council appears to have been both the start and end points of its analysis. There is no evident assessment of the layout of the rooms or whether they would be usable for their function for example, or of in what way the dwellings would be substandard, other than a reference to how the amount of floor space related to the Standards. In the absence of a development plan policy requiring strict compliance with those Standards, I consider that to be an unreasonable approach and that a more qualitative assessment should have been undertaken. Accordingly, I find that there has been unreasonable behaviour and that unnecessary or wasted expense has been incurred by the applicant on this matter.

The Council sought affordable housing on a scheme of under 10 units and the Council's Housing Team did not object to the application

9. At the time that the Council issued its decision, the application relating to the larger phase of the development was undetermined. At that time, I do not consider it unreasonable of the Council to have considered the implications on affordable housing delivery of a phased approach to the development or for them to conclude as they did. That the Council's Housing Team did not object does not change that fact to my mind. That application was subsequently refused, and the Council alerted me to this in their Statement. They may have opted then to reflect then on the second reason for refusal, and they may have done so but in any event, the applicant had already addressed the matter in their own Statement. Only a fleeting reference is made to the matter in the applicant's Final Comments, and this appears more associated with an application for a costs award than addressing the planning merits of the matter further. Accordingly, I do not find that unreasonable behaviour has taken place or that wasted or unnecessary has been incurred.

Conclusions

10. 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 partial 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 Braintree District Council shall pay to AR Clarke (Builders) Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of matters relating to the quality of accommodation provided by the development and specifically, internal space standards and the amount of garden space provided; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Braintree 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.

N Smith

INSPECTOR