The Planning Inspectorate

Costs Decision

Site visit made on 3 December 2020

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Costs application in relation to Appeal Ref: APP/P1560/W/20/3254413
Owl Lodge, Vicarage Lane, Thorpe-Le-Soken, CLACTON-ON-SEA, CO16 0EH

- 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 Stanfords on behalf of Christine Hickford for a full award of costs against Tendring District Council.
- The appeal was against the refusal of planning permission for the erection of three detached 3-bedroom bungalows.

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.

3. The planning application was refused on two grounds – one relating to harm to both local character and the appearance of the landscape, and one relating to highway safety along the local highway network.

4. With regard to the harmful impact on local character and the landscape, whilst I have agreed broadly with the Council's conclusions, I find that the reasoning given for this is vague and largely restricted to a general statement about a strong frontage on Vicarage Lane. On the basis that the Council has depended on vague and generalised statements about the harmful impact of the development, I consider this to be unreasonable behaviour in line with guidance in the PPG.

5. With regard to highway safety, I note that the Highway Authority did not make any specific objections, but did suggest conditions that might mitigate against elements of the development becoming harmful to highway safety. However, one of the conditions suggested by the Highway Authority was that "the public's rights and ease of passage over public footpath no. 5 (Thorpe le Soken) shall be maintained free and unobstructed at all times, with the reason to ensure the continued safe passage of the public on the definitive right of way and accessibility". This is not likely to be a valid condition, given that St Michael's Road is a private street and the condition would not meet the tests required by the PPG. All other suggested conditions appear to relate to the provision of access and parking facilities on site, including visibility splays. The

safety of those users of St Michael's Road other than those from the proposed bungalows could not therefore be suitably guaranteed by way of condition.

6. In addition, the appellant made reference to an earlier planning appeal decision relating to the construction of two dwellings on land on the opposite side of St Michael's Road, in which the Inspector stated that "the proposal would not be harmful to highway safety and would not inconvenience users of the adjoining bridleway". However, the Inspector also stated that his decision would not create a precedent for further development and, in this case, the circumstances of the appeal site are not identical and there is now a degree of cumulative impact to be considered.

7. The appellant also contends that the Council has presented no evidence to justify its position regarding harm to highway safety. I note that no traffic generation figures appear to have been presented by either side, but it is clear that the Highway Authority has concerns regarding the safety of the public using St Michael's Road. In this case, the issue cannot be resolved by use of a valid condition.

8. On the issue of Highway Safety, therefore, I find that the Council was justified to query the impact of the proposal on highway safety grounds in view of the differing circumstances between the appeal site and the development site opposite, and in view of potential cumulative impacts that were, for obvious reasons, not considered at the time of the earlier appeal. I do not consider that the Council has acted unreasonably on this particular element of the refusal.

9. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Christine Hickford the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred with regard to contesting the reason for refusal relating to the character and appearance of the surrounding area; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. 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.

J D Westbrook

INSPECTOR