
Costs Decision

Site visit made on 1 December 2020

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2020

Costs application in relation to Appeal Ref: APP/P1560/W/20/3251890 35 Holland Road, Little Clacton, Clacton, Essex

- 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 Hubble for a partial award of costs against Tendring District Council.
 - The appeal was against the refusal to grant planning permission for demolition of existing bungalow and associated outbuildings and construction of 10No. bungalows, improvement of existing access and enhancement of existing landscape features..
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Decision

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

The submissions by Mr Hubble

2. The applicant has made the application on substantive grounds. In summary, these are:
 - The Officers report did not make a proper assessment of the planning merits of the application for planning permission based on the application of Paragraph 11d) of the National Planning Policy Framework (the Framework). The Council's objection arises from a policy objection, that the site lies outside the settlement boundary. It is unclear on where the harm arises. This omission is reflected in the first reason for refusal.
 - Officers failed to cooperate with the applicant in securing planning obligations.
3. Furthermore, the Council has behaved unreasonably resulting in the applicant incurring additional unnecessary expense.

The response by the Council

4. The Council's response is as follows:
 - The first reason for refusal clearly articulates consideration of the application against both the Framework and local policies and in so doing demonstrates the environmental harm that would be caused by the development
 - It is acknowledged that the officers report did not fully address the offer which had been made by the appellant on affordable housing. However,

this could only be secured by legal agreement which had not been offered.

- Even if a legal agreement had been completed in respect of financial contributions to public open space and the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) this would have been insufficient to overcome the environmental harm which would have resulted from the proposed scheme.

5. The Council has not behaved unreasonably.

Reasons

Ground 1

6. The officers report is clear in setting out the importance of Paragraph 11d) given the Council's Housing Land Supply position and the implications of this for adopted policy.
7. It is unclear from the officer's report on the extent to which the proposal, being located outside the settlement boundary, would result in harm. The Council states in its submissions that the degree of harm arising from the second reason for refusal was linked to the first in respect of the environmental strand of sustainability.
8. I do not consider that this argument holds as there are two different reasons for refusal, substantiated by different policies related to both the location of the site and its design given that this is backland development. The Council appear to partially accept this argument in its submissions. There was a lack of clarity on the justification for the first reason for refusal.
9. For these reasons in respect of this Ground the Council behaved unreasonably leading to the applicant incurring unnecessary expense.

Ground 2

10. The Council acknowledge the omission in the officer report regarding the applicant's approach to the Council in seeking a policy compliant amount of affordable housing through legal agreement.
11. From my assessment both the officer report and the wording of the third reason for refusal do not accurately reflect the applicant's willingness to address these matters. However, whilst the applicant makes reference in the extensive email trail to his client's interest in the provision of obligations for both affordable housing and towards the RAMS, it is unclear why he did not circulate a draft Undertaking.
12. In respect of this claim, it would seem that negotiations faltered because of the inactions of both parties, that is the appellant failed to prepare a draft Undertaking and the Council wasn't proactive in trying to secure one. The reasons for this inaction by both parties is unclear from the email trail.
13. Although I consider that both the report and decision letter are incomplete in clearly stating how the application was presented for decision without a draft agreement, I do not consider that these matters resulted in unnecessary or wasted expense by the applicant.

14. Finally, in respect of the other requirements for planning obligations, despite the comprehensive pre-application advice, it would seem that no attempt was made by the applicant to address the issues of contributions for play space at the application stage.
15. For these reasons I consider that unnecessary expense was not incurred by the applicant in respect of these issues.

Conclusions

16. Planning Practice Guidance, indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal.
17. The officer's report was unclear on the extent of harm arising from the location of the appeal scheme beyond the settlement boundary in respect of its first reason for refusal. A more thorough consideration of this matter should have been covered in the report.
18. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the Guidance has been demonstrated on this matter.

Costs Order

19. 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 the Tendring District Council shall pay to Mr Hubble, the costs of the appeal proceedings described in paragraph 14 above.
20. 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. In the event that the parties cannot agree on the amount, a copy of the note on how to apply for a detailed assessment by the Senior Courts Costs office is enclosed.

Stephen Wilkinson

INSPECTOR