
Costs Decision

Site visit made on 27 August 2020

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date : 8th January 2021

Costs application in relation to Appeal Ref: APP/P1560/W/20/3250384 85 Salisbury Road, Holland On Sea CO15 5LS

- 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 John Coley for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for a 3-bed bungalow.
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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 (the PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The PPG¹ provides examples of behaviours that risk an award of costs, including, amongst others: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.²
4. The applicant contends that the Council has acted unreasonably in persisting with its objections with regards to the effect of the proposal on the character and appearance of the area, and on living conditions. This is due to an Inspector recently indicating the acceptability of the scheme in those respects.
5. The proposed plans for the previous appeal³ on the site and the current appeal are the same. This is not disputed by the Council. In the previous appeal, the Inspector found the effects of the proposal on the character and appearance of the area, and on living conditions, to be acceptable with regards to LP Policy HG14 and the provisions of the National Planning Policy Framework.

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

³ Appeal Ref: APP/P1560/W/3234819

6. Whilst the Council has included additional policies within its refusal reasons, the policies do not invalidate the previous Inspector's findings with regards to the effect of the proposal on the character and appearance of the area, and on living conditions. Indeed, the Council has not provided any substantive evidence as to why it has persisted with its objections in these respects contrary to the findings of the previous Inspector. Given the circumstances of the earlier appeal are substantially comparable to the current appeal, I therefore find that unreasonable behaviour in this regard has been demonstrated.
7. The applicant also contends that the Council's objections with regards to access are unsubstantiated. I acknowledge that the Council's intention to ensure that the development provides safe and convenient access for people of all abilities is supported by both local and national policies. The Council's evidence in this regard, however, relies on the assertion that the approach to the private entrance of the dwelling appears to be only 835mm rather than the 850mm required in Part M4(3) of the Building Regulations 2010 Approved Document M (Access to and Use of Buildings), Volume 1 2015. Part M4(3) is an optional requirement for wheelchair user dwellings. The Council has not demonstrated in its evidence that there is a policy requirement for the proposal to meet this optional requirement. Furthermore, an approach width of 850mm could be secured by condition if necessary.
8. As such, I find the Council made assertions about the proposals' accessibility that are not supported by an objective analysis. Furthermore, the Council did not give due regard to the realistic potential for conditions to overcome their concerns regarding access.
9. Overall, therefore, I find that unreasonable behaviour has been clearly demonstrated by the Council and this has caused the applicant unnecessary expense in the appeal process.

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 Mr John Coley the costs of the appeal proceedings described in the heading of this decision; with such costs to be assessed in the Senior Courts Costs Office if not agreed.

S D Castle

INSPECTOR