

Costs Decision

Site visit made on 28 July 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Costs application in relation to Appeal Ref: APP/P1560/W/20/3258337 9 Dumont Avenue, Point Clear, St Osyth CO16 8JP

- 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 & Mrs Mockford for an award of costs against Tendring District Council.
 - The appeal was made against a failure to give notice within the prescribed period of a decision on an application for outline planning permission for demolition of house and erection of nine dwellings.
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicants' basis for claiming full costs relates to the Council's alleged unreasonable behaviour with regard to procedural issues, specifically not explaining the reasons for not reaching a decision within the relevant time period, and why permission would not have been granted had the application been determined within the relevant period. In addition, the claim relates to a number of detailed matters concerning the Council's consideration of the application and subsequent appeal.
 4. With regard to the procedural issues, the Council's main appeal submission was a statement in the form of an officer's report, which did not address the reasons for its failure to reach a decision within the prescribed period. However, in its costs rebuttal the Council reproduces correspondence sent to the applicants explaining that the change in case officer handling their application is due to staff shortages and requesting an extension of time within which to consider the application. The Council notes that no response was received to this request and I note also that the appeal was made within a week of the date of this correspondence. In these circumstances, where the Council gave a full and reasonable explanation for the delays in determining the application and
-

requested further time to do so, but the applicants chose to make an appeal, I cannot find any unreasonable behaviour on the Council's part. The Council's statement in the form of an officer report fully sets out the reasons why it would have refused the application. As such, there is no unreasonable behaviour.

5. Turning to the detailed issues around the substance of its case, the Council's first putative reason for refusal relates to the effect of the proposal on the character and appearance of the area. It states that the introduction of residential properties in this location will demonstrably urbanise the immediate character of the area and set a harmful precedent for similar forms of future development. The basis for this view is provided in the body of the report. As such, the Council did substantiate the reasons why it would have refused the application.
6. Considerations relating to the effects of development on local character involve matters of judgement. Based on the appeal submissions, and acknowledging that matters of judgement were involved here, I consider that the Council's assessment is proportionate and reasonable, including reference to the context for the development and relevant development plan policies, to support its judgement of the consequences of the development in this location. The Council is entitled to refer to Policy HG13 concerning backland development if it considers this is relevant and it can substantiate its reasons for relying on the policy, which it does in the report. However, this was not one of the policies that informed its putative reason for refusal.
7. Similarly, Policy EN3 concerning the Coastal Protection Belt is part of the adopted development plan and, therefore, the Council is entitled to rely on it. However, I acknowledge that in this location, which is some distance from the coast and close to the settlement boundary, there is limited evidence to support the contention of specific harm from views of the proposed dwellings in relation to the undeveloped coastline. However, this is not the only policy or argument which supports the first reason for refusal. The policies initially referred to are SP7 and EN1. Consequently, it is not possible to infer that had the Council not referred to Policy EN3 it would have changed the position it took with regard to the proposal. Moreover, any costs associated with the applicants' statement of case in terms of addressing this issue would be partial and limited in the context of wider arguments about the effect on character and appearance.
8. The Council contends that it did visit the site, contrary to the applicants' claim, and I have no basis to believe that this did not occur. The Council explains that there is no reference to a site outside the locality in the reasons for refusal and the basis for the reference to an urban regeneration area. It seems to me that these are minor points of disagreement that do not have a significant or determinative bearing on the application or appeal. The requirement for a contribution to open space in the form of a local play area is clearly set out in the Council's statement. Reference is made to the deficit in equipped play and formal open space in the area and that the contribution would be used to enhance a specific play area. Supporting guidance and supplementary planning documents on this issue were provided as part of the appeal submissions. Finally, the Council did provide a list of conditions as one of its appeal submissions. Taking all these findings together, there is no basis for me to conclude that the Council's approach with regard to this proposal amounted to unreasonable behaviour on its part.

9. Accordingly, having considered this costs application on its merits, for the reasons given I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

J Bell-Williamson

INSPECTOR