



Costs Decision

Site visit made on 15 October 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Costs application in relation to Appeal Ref: APP/P1560/W/21/3269945 Land adjacent Timberlea Mere, Shair Lane, Great Bentley, Colchester CO7 8QT

- 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 Tendring District Council against Mr P Brown
 - The appeal was against the refusal of planning permission for 'Erection of 2 No. detached dwellings and alterations to existing vehicular access'.
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Decision

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

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 Local Planning Authority (LPA) alleges that Mr P Brown (the Appellant) caused unnecessary or wasted expense in making a planning application despite an LPA officer's pre-application advice that:

"Regardless of the Council's housing land supply position, due to issues with the enquiry-site failing to meet the social strand of sustainable development as set out in the NPPF, an application for the proposal is likely to receive a recommendation for refusal."

In their pre-application advice, the LPA officer referred to a previous dismissed appeal from 2018 for a scheme.

4. Effectively, the LPA's claim is made on the basis that:
 - The development is clearly not in accordance with the development plan and no other material considerations indicate the decision should have been made otherwise; and,
 - The appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
5. In respect of the first point, the LPA's claim rests on the Appellant having chosen not to take non-binding and informal advice from LPA officers. Instead,

the Appellant chose to seek an in-depth consideration and formal decision by submitting a planning application, not for having brought an appeal.

6. At the time the Appellant made their application and subsequently brought their appeal, the 'tilted balance'¹ applied in respect of the housing policies of the development plan. It was, therefore, not unreasonable for the Appellant to conclude that the matters were finely balanced and to seek the detailed assessment of a planning application. Moreover, had the Appellant disagreed with the LPA officer's informal opinion, they had no redress other than to seek a formal binding decision, which attracts a right of appeal.
7. The LPA takes the view matters were not finely balanced, as its officer had advised the Appellant that planning permission would not be granted even if the 'tilted balance' applied. This advice was based on a previous dismissed appeal decision which sought permission for a new dwelling to be located on Shair Lane (near to the appeal site). However, that appeal related to the loss of an employment site, and the Inspector did not reach a conclusion as to whether or not the 'tilted balance' applied. Thus, the material considerations and planning balance for that appeal were substantially different to those of the current appeal. In any case, the policy context has changed since that previous appeal decision.
8. In the interests of clarity, my decision in respect of the relevance of the previous appeal decision and my overall conclusions in respect of the LPA's costs claim does not imply any determination on my part as to whether the proposal should, or would, have been granted planning permission if the 'tilted balance' did still apply.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Kim Langford Tejrar

INSPECTOR

¹ Paragraph 11(d) National Planning Policy Framework