



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/21/3269982 Land adjacent Little Thatch, Mill Lane, Thorpe-Le-Soken, Clacton-on-Sea CO16 0ED

- 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 and Mrs C Cramphorn against the decision of Tendring District Council.
 - The appeal was against the refusal of planning permission for 'One dwelling'
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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 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. Mr and Mrs C Cramphorn (The Appellants) allege that the Local Planning Authority (LPA) behaved unreasonably in that:
 - It prolonged the proceedings by introducing a new reason for refusal,
 - It prevented or delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations,
 - It failed to produce evidence to substantiate each reason for refusal on appeal,
 - It refused planning permission on a planning ground capable of being dealt with by conditions, and;
 - It persisted in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
3. This appeal proposal is a resubmission of an almost identical proposal, which was dismissed at appeal¹. The main issues for that appeal were the effect of the proposal on the living conditions of occupiers of neighbouring property; in particular Mill Lodge and Little Thatch, and the effectiveness of a unilateral undertaking in mitigating adverse effects on the integrity of Hamford Water Special Protection Area (SPA) and Ramsar Site.

¹ APP/P1560/W/18/3213632

4. The previous appeal was dismissed on the basis the unilateral undertaking did not specifically name the Hamford Water Special Protection Area (SPA) and therefore could not guarantee mitigating financial contributions would be directed correctly².
5. The LPA's Planning Officer recommended the current appeal scheme for approval; that recommendation was overturned by the LPA's Planning Committee. The Committee provided two reasons for refusal, which were:
 - The effect of the proposal on the living conditions of neighbouring occupiers, and;
 - Insufficient information relating to foul drainage.
6. The Appellants allege that the LPA introduced an additional reason for refusal, relating to foul drainage, despite such an issue not having been raised before. They also allege that the LPA persisted with a reason for refusal, relating to living conditions, which had already been assessed by an Inspector and the LPA's Planning Officer, who had found the proposal to be acceptable in this regard. The Appellants further allege that no other issues beyond the unilateral undertaking had been identified and therefore the proposal had been found to be acceptable in all other regards. The Appellants therefore conclude that the LPA prevented development which should clearly have been permitted and persisted in objecting to a scheme which had already been indicated to be acceptable.
7. The LPA has responded to the Appellant's costs claim. The LPA maintains that the Planning Committee was within its rights to form a different view to their Planning Officer. The LPA further states that the Committee provided reasons for refusal which justified their departure from the Planning Officer's recommendation for approval.
8. The Inspector for the previous appeal found that there would be no unacceptable adverse impact on the living conditions of occupiers of neighbouring property, and they concluded that the proposal would accord with the development plan in this respect. The current appeal scheme is identical in respect of its design, scale and siting to the previous appeal and therefore its effect on the living conditions of occupiers of neighbouring property. No new evidence was produced by the LPA to substantiate the inclusion of this as a reason for refusal and there has been no material change in circumstances. I have therefore reached the same conclusions as the previous Inspector, on the same reasoning.
9. There were no other issues raised in respect of the previous appeal scheme, and, in citing foul drainage as a reason for refusal, the LPA has introduced a new reason for refusal at a late stage. Moreover, there is no evidence indicating that foul drainage provision could not be put in place, subject to a condition requiring it. No evidence was produced by the LPA to substantiate the inclusion of this reason for refusal.
10. In respect of both reasons for refusal, the LPA persisted in objections to a scheme that an Inspector had otherwise found to be acceptable³.

² These technical issues have been resolved in the unilateral undertaking submitted in support of this appeal.

³ Subject to a unilateral undertaking.

11. The Planning Committee does have the discretion to reach an alternative opinion to that of its Planning Officer, however, that opinion must be justifiable and supported by evidence. Moreover, it must take into account the previous assessment made by an Inspector and support any divergent opinion with evidence. Further, there is no evidence that that Planning Committee took the previous appeal decision into account, nor that Planning Officers sought to draw the Committee's attention to this material consideration.
12. The proposal should clearly have been permitted and I have allowed the appeal having regard to the development plan, national policy and other material considerations.
13. For these reasons, I conclude that the LPA has behaved unreasonably, thereby causing the Appellant unnecessary and wasted expense in the appeals process.

Costs Order

14. 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 Mrs and Mrs C Cramphorn, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. 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.

Kim Langford Tejrar

INSPECTOR