
Costs Decision

Site visit made on 9 November 2021

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2021

Costs application in relation to APP/P1560/W/21/3268225

Land off Trinity Road, Mistley, Manningtree, Essex CO11 2AU

- 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 for a full award of costs against Mr R Brooks and family.
 - The appeal was against the refusal of planning permission for erection of 65 dwellings.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance¹ (PPG) states that parties in planning appeals normally meet their own expenses and are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence. It continues by saying that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive in relation to the planning merits of the appeal.
3. The Council alleges two examples of unreasonable behaviour of a substantive kind on the part of the appellants. The first relates to the merits of the appeal and a lack of due diligence on the part of the appellants over not sourcing the most recent evidence concerning the ability of the Council to demonstrate a five-year housing land supply. Part of the grounds for appeal had related to the lack of such a five-year supply, when in fact the most recent appeal decisions had determined this no longer to be the case.
4. The second was over the appellants' assertion that the proposed extension to the Manningtree and Mistley Conservation Area (CA), within which the appeal site lay, was yet to be adopted. The Council again cite a lack of due diligence on the part of the appellants. Had this been applied, fuller investigation would have revealed this extension to have had formally been adopted.
5. The PPG Provides examples of the types of behaviour which may give rise to a substantive award against an appellant². This warns that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable

¹ Paragraph: 028 Reference ID: 16-028-20140306 Revision date: 06 03 2014

² Paragraph: 053 Reference ID: 16-053-20140306 Revision date: 06 03 2014

prospect of succeeding. This may occur in cases including when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

6. The appellants have subsequently acknowledged that the most recent appeal decisions support a demonstrable five-year housing land supply in Tendring and that the proposal falls entirely within the extended CA as formally adopted. My decision on this application for costs thus hinges upon whether, in the light of the appellants' concession over these errors, the appeal had been made in circumstances where it no longer had any reasonable prospect of success.
7. I consider that the appellants make fair points in rebuttal over both of the grounds for awarding costs. In respect of the first, the appellants contend that the Council's development plan policies could be deemed out of date for reasons other than the lack of a demonstrable five-year housing land supply. In respect of the second ground, the location within the extended CA would not automatically preclude this proposal being acceptable and its 'less than substantial harm' needed to be weighed against the public benefits provided.
8. Both arguments against a substantive awards of costs have some merit. On the basis of these, I consider that the appellants had not pursued an appeal that had no reasonable chance of success. Consequently, there are insufficient grounds to conclude unreasonable behaviour of a substantive kind, such as to justify an award of appeal costs to the Council.

Conclusion

9. For the reasons given, I conclude that the application for costs should be refused.

Jonathan Price

Inspector