The Planning Inspectorate

Costs Decision

Site visit made on 23 November 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3269705
Land Adjacent on the East side of Hackmans Lane, Cock Clarks, CM3 6RE

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Millen Homes Ltd for a full award of costs against Maldon District Council.
- The appeal was against the refusal of planning permission for development of 5 detached dwellings on land east of Hackmans Lane, Cock Clarks.

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.

3. Local planning authorities are required to behave reasonably in relation to procedural and substantive matters at the appeal. They are at risk of an award of costs against them if they behave unreasonably by not determining similar cases in a consistent manner or by failing to have regard to its own adopted policies.

4. In determining a previous appeal[1] on the site, the Inspector came to the conclusion that the proposal was for an unsuitable use outside of a settlement boundary and cited policies S8 and H4. Therefore, the Council have not departed from the overall findings of the previous Inspector, but they did not have full and proper regard to his findings in regard to policy S8.

5. They have acted inconsistently in departing from their own previous decision as they have not cited policy S8, which sets out the principles for development located outside of the settlement boundary, in the most recent decision. In addition, they chose not to include a reason for refusal based on the location of the proposed development on the first application but did so on the second. For the reasons I have given in my formal decision, the Council were correct to consider the current scheme against Policy S1 and refuse the scheme on this point. However, in doing so it has acted inconsistently and thus unreasonably.

6. The Council have relied upon policy S1 in their decision, which was a policy considered as part of the previous appeal but not directly in terms of the location of the development. The applicant therefore felt the Council had

[1] APP/X1545/W/20/3252706

introduced an additional reason for refusal. This left the appellant in a very difficult and unclear position.

7. The Council were correct to refuse the second application because it would be harmful. However, in doing so it set aside policy S8 because of the lack of five-year housing land supply and relied solely on policy S1 due to its reference to the presumption in favour of sustainable development. Policy S8 is only deemed to be out of date by virtue of there being no five-year housing land supply. It should not be set aside. The Council still needed to reach a finding on whether the proposal adhered to the policies of the development plan and then explain what weight they were giving any conflict. The Council's approach has resulted in inconsistent and unreasonable decision making.

8. Had the Council acted in a more consistent manner throughout the two applications then it's likely the appellant would have had adequate clarity and consequently the second appeal, and the costs associated with it, could have been avoided altogether. Therefore, the Council has acted inconsistently and thus unreasonably.

Conclusion

9. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 Maldon District Council shall pay Millen Homes Ltd the costs of the appeal proceedings described in the heading of this decision.

11. The applicant is now invited to submit to Maldon 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Pannell

INSPECTOR