



Costs Decision

Inquiry held on 1 to 4 March 2022

Site visit made on 4 March 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3283478 Land 250M North Of 16A Maldon Road, Burnham-on-Crouch, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Think Green Land Limited for a full award of costs against Maldon District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission to extend the retirement community by erection of 232 dwellings (Class C3), an ancillary multi-use community building (Class F2), construction of estate roads, footpaths, car and cycle parking, drainage infrastructure, allotments, hard and soft landscaping, and associated works.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Think Green Land Ltd

2. The Council confirmed that it does not object to the proposal on the basis that it is greenfield development located outside a defined settlement boundary. This is because the Council has accepted that unallocated sites need to come forward outside the settlement boundaries, in the open countryside, to meet its acute and critical housing needs.
3. The Council agreed under cross-examination that the landscape and visual effects of the proposal are only minor adverse, which is at the bottom of the hierarchy of potential harm. The appellant claims that this level of harm is as low as any greenfield development for housing could reasonably be expected to be.
4. The reason for refusal with respect to residential living conditions is also unsubstantiated, and based on vague, inaccurate and generalised assertions that is not supported by objective analysis. It is agreed that there is no right to a view. None of the Council's written evidence went beyond asserting that there would be a change in the view. The appeal site boundary would be over 60m from the rear elevation of the existing properties at their closest point. The nearest proposed residential properties would be 2m from the boundary of the appeal site and would be single storey bungalows with a height to ridge of 6m. The community building would be 10m from this boundary at its closest point, with a height to ridge of 7.6m. No substantive evidence was produced to explain how the proposed development and its landscaping proposals would harm the living conditions of occupiers. The question is not whether there is

- harm to outlook. The question is whether there is harm to residential living conditions, taking into account matters including outlook.
5. The Council cannot say that its behaviour is reasonable simply because it has engaged a planning consultant. The question of reasonableness goes to the adequacy of the evidence presented. Simply saying that the proposal would cause harm, whilst simultaneously accepting that this harm is necessary and inevitable to meet significant and acute housing needs, gets nowhere close to explaining why or how planning permission should be refused and is unreasonable.
 6. The Council agree that they cannot demonstrate a 5-year supply of housing land. The 'tilted balance', as set out in the National Planning Policy Framework (the Framework), therefore applies. This states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. However, the reason for refusal is based on the wrong test that the "benefits of the proposed development do not overcome the harm caused to the character of and appearance of the area and to the amenity of existing occupiers". There is no indication in the decision that the Council, via its committee, applied the proper test.
 7. The benefits of the scheme are many and weighty, and this has been agreed with the Council in the Statement of Common Ground. This includes agreement that very substantial weight should be attributed to the benefits of providing additional housing, specialist housing for older people, and affordable housing, and that there is an acute and critical need to deliver the same. No rational reason was given as to how, applying the correct 'tilted balance', minor adverse landscape and visual impacts that sit right at the bottom end of the scale can significantly and demonstrably outweigh these benefits.

The response by Maldon District Council

8. The proposal is a large specialist housing scheme on an unallocated site outside of the settlement boundary, in open countryside, with material harm in terms of landscape and visual impacts, as agreed with the appellant. It is agreed by the appellant that the scheme is contrary to two of the most important policies in the Development Plan, namely Policies S8 and D1. The committee were entitled to rely on the adverse landscape and character impacts, together with the loss of residential living conditions, to refuse the proposal.
9. The Council has submitted a Proof of Evidence by an expert planning consultant, to deal with the character and appearance issue, the effect on residential living conditions, and the planning balance. It co-operated in the production of four statements of common ground, which should be taken as constituting the Council's evidence on a range of matters. As to residential living conditions, this is a question of planning judgment, and the Council has articulated in the evidence of Mr Breedon why it is considered there would be an impact on residential living conditions in this case. The weighing exercise is a matter of planning judgment in which the Council reasonably takes a different view to the appellant. The Council has justified their conclusion for why the 'tilted balance' tells against the scheme.
10. Although the wording for the reason for refusal is not in the words of the 'tilted balance' in Framework, it is clear from the Officer's Report that the committee

were fully informed that the 'tilted balance' applied in this case. The committee can be taken to understand the 'tilted balance', given that it is a central policy of the Framework. A reason for refusal is only intended to be a very summary explanation of why the proposal is being refused, rather than anything detailed, and it should be read in conjunction with the Officer's Report.

Reasons

11. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.
12. The 'tilted balance' was correctly set out in the Officer's Report. It was also debated at the planning committee, as shown in the committee minutes. However, the decision itself appears to have been taken on the basis that the benefits of the development did not outweigh the harm, as also set out in the committee minutes and in the wording of the reason for refusal. This is the incorrect planning balance, and does not take into account the requirement that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, as set out in the Framework.
13. The proposal's harms, as set out by the Council, are minor adverse visual and landscape effects, and the effect on the living conditions of the occupiers of some residential properties to the south of the appeal site, with regard to outlook.
14. A minor adverse effect on character and appearance is almost inevitable with a substantial housing development on greenfield land, and is at the lowest level of the hierarchy of harm. The Council acknowledges that just such development is required, outside of settlement boundaries, to respond to its acute and growing housing need, and in light of its failure to have secured a 5-year housing land supply.
15. The proposal would have a very limited effect on the living conditions of the occupiers of the relevant dwellings to the south of the appeal site. It would be significantly distant from the houses themselves, at least 60m and in many cases far further. The proposal is only for one or two storey buildings, set behind a landscaped border. All of the affected houses have large rear gardens and it would only be the rearmost part of the rear gardens that would be affected at all in terms of outlook, and even then only to a minor degree.
16. The original decision of the Council was therefore unreasonable, both on the merits of the scheme and also because the Council did not properly apply the 'tilted balance'. By the time of the appeal, and throughout the appeal process, it was clear that the Council understood that the 'tilted balance' was engaged. However, it did not take the next logical step, which was to withdraw from defending its indefensible position, and instead proceeded to try and claim that the appeal should fail, even when applying the 'tilted balance'. This is an untenable and unreasonable position in light of the substantial benefits of the

proposal, which were agreed with the Council, and the minor harm to character and appearance as the only meaningful harm. Overall, the Council's actions have resulted in the delaying of development which should clearly have been permitted.

17. The proposal should not have been refused in the first place, and should not have then been actively defended at appeal. This is particularly galling in light of the Council's agreed housing land supply of only 2.92 years. It is failing, very significantly, to secure the 5-year supply of housing land for which it should be striving. In addition, the appeal proposal is for two types of residential accommodation, older persons and affordable housing, that are most in need in the District, as set out in the Council's own Maldon District Local Housing Needs Assessment Final Report, dated May 2021. The need for both types of accommodation is acute and growing.

Conclusion

18. Taking all of the above into account, I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

19. 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 to Think Green Land Ltd, the costs of the appeal proceedings described in the heading of this decision.
20. 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.

O S Woodward
INSPECTOR