

Costs Decision

Site visit made on 16 March 2022

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 18th May 2022

Costs Applications in relation to Appeal Ref: APP/P1560/W/21/3280842 Land at Elm Farm, Frinton Road, Thorpe le Soken, Essex CO16 0JE

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mr N Morris (Elm Farm Country Park) for a full award of costs against Tendring District Council.
 - Application B is made by Tendring District Council for a full award of costs against Mr N Morris (Elm Farm Country Park).
 - The appeal was made against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Formal Decision on Application A

1. The application for an award of costs against Tendring District Council is allowed in part, in the terms set out below.

Formal Decision on Application B

2. The application for an award of costs against the Appellants is refused.

Submissions on behalf of the Appellants

3. In their application for an award of costs, the appellant deals, in turn, with each of the four reasons for refusal that were set out in the Council's decision on the planning application. It is argued that the appeal ought not to have been necessary.
4. In respect of the first reason for refusal, it is argued that the Council failed to undertake a thorough assessment of the benefits or disbenefits of the proposals and that they applied planning policy in disregard of the site's special circumstances.
5. In respect of the second reason for refusal, it is argued that the Council failed to take account of the nature of the site and the proposals and required a financial contribution to affordable housing provision in the area without justification.
6. In respect of the third reason for refusal, it is again argued that the Council failed to take account of the nature of the existing site and the appeal proposals and that they required a financial contribution for mitigation without justification.

7. In respect of the fourth reason for refusal, it is argued that the Council failed to take account of the nature of the site as already representing a form of existing residential use and that they required a financial contribution to public open space provision in the area without justification.
8. The Appellants defend the application for an award of costs that had been made against them, arguing that "a spectrum of material considerations" had been advanced to support the appeal. They point out that the arguments in relation to the first reason for refusal had to be "read in the round" and that a range of material considerations had to be taken into account, rather than mere reliance on a single Development Plan Policy. Similarly, in relation to the second, third and fourth reasons for refusal, the Appellants emphasise the existing nature of the appeal site and state that rational arguments were put forward in relation to the various requirements for financial contributions that had been made.

Submissions by Tendring District Council

9. In their application for an award of costs, the Council contend that the appeal had no merit and was bound to fail.
10. In respect of the first and second reasons for refusal, the Council argue that the Appellants have relied on the argument that the caravans could contribute to "affordable housing" without justification. The Council go on to emphasise that they have identified a "healthy five-year housing supply" and point out that this is not dealt with in the Appellants' submissions.
11. In respect of the third and fourth reasons for refusal, the Council assert that the Appellants have failed to "put forward a rational defence".
12. The Council further defend the application for an award of costs that had been made against them, noting that they had reviewed their position on receipt of the appeal. They argue that, in presenting their own "Statement of Case", they have demonstrated not only that they acted reasonably in relation to each of the four reasons for refusal but that their decision on the application was correct in every respect.

Reasons

13. 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.
14. The circumstances of this case are unusual, since the appeal sought the relaxation of conditions that restrict the terms of occupancy for existing units that could be occupied in any case and have been in place for a considerable period. No new construction was proposed. Each case must be determined on its own merits, however, and the particular circumstances of this case are relevant to both the appeal decision and this decision.
15. The first reason for refusal raised important policy issues and the conflict with policy has been decisive, in effect, in the decision to dismiss the appeal, although that outcome was not inevitable. Evidently, the Council did not act unreasonably in relation to this reason for refusal.

16. Even so, the Appellants advanced a number of relevant material considerations and they argued their case cogently and rationally. It is acknowledged that appeal decisions might not always be made in accordance with the statutory Development Plan, if “material considerations indicate otherwise”. It cannot fairly be said that the appeal had “no realistic prospect of success” and I have concluded, therefore, that the Appellant did not act unreasonably in respect of the prosecution of the appeal.
17. In any case, I accept that the Council’s achievement of a “healthy five-year housing supply” was not questioned by the Appellants and did not form any part of their case. It was not necessary to allude to it, therefore.
18. In relation to the second, third and fourth reasons for refusal, the Appellant put forward the argument that various financial contributions ought not to be required, because of the nature of the existing development and the limited change for which permission was sought (the variation of existing planning conditions). In broad terms, I have accepted those arguments in respect of these three reasons for refusal, even though the appeal has failed nonetheless. Evidently, the Appellants did not act unreasonably in relation to these three reasons for refusal.
19. In respect of the second reason for refusal, the Council argue that additional detailed evidence ought to have been advanced to demonstrate that the caravans could be considered to be broadly equivalent to “affordable housing” in terms of planning policy. I have not been persuaded by that argument, and I have accepted the contrary arguments of the Appellants in relation to this issue. Nevertheless, in the absence of a market analysis, I accept that a reasonable submission has been presented by the Council, to justify their decision, and I have concluded, therefore, that the Council did not act unreasonably in respect of this reason for refusal.
20. On the other hand, the Council have failed to take account of the nature of the existing site, in relation to the likely impact of the development on the nearby European Designated site. It is plain that ‘Elm Farm Country Park’ in its existing state would be expected to have an impact on such a site, perhaps especially so as the holiday park is a tourist destination. This factor ought to have been considered carefully by the Council and I am convinced that the implications of the existing status of the site were not properly appraised.
20. In relation to the likely need for additional open space facilities in the village, the Council argued that the needs of permanent residents would be significantly different from those of holidaymakers. I have not accepted that approach but I do not believe that it can be said to have been unreasonable in the context of the planning appeal. I have concluded, therefore, that the Council did not act unreasonably in respect of this reason for refusal.
21. The award of costs supports an effective and timely planning system in which all parties are required to behave reasonably. In respect of the third reason for refusal, I have concluded that the Council failed to consider the issues carefully and failed to advance coherent arguments in support of one of their reasons for refusal. In this respect, the Council did act unreasonably, in my opinion.

Conclusions

22. In respect of Application A, the application by the Appellant, 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 partial award of costs is justified.
23. In respect of Application B, the application by the Council, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the 'Planning Practice Guidance', has not been demonstrated.
24. 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 Mr N Morris (Elm Farm Country Park), the costs of the appeal proceedings limited to those costs incurred in relation to Reason for Refusal number 3; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
25. 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. 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.

RC Shrimplin

INSPECTOR