

Costs Decision

Site visit made on 14 June 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2022

Costs application in relation to Appeal Ref: APP/P1560/W/21/3282526 Land east of Wolves Hall Lane, Tendring, CLACTON-ON-SEA, CO16 0DH

- 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 Fairley & Sons (Farms) Ltd for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for two bespoke custom built dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG also makes it clear that a local planning authority (LPA) is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to the development plan, national policy and any other material planning considerations. An LPA may also be at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicants consider that the appeal was unnecessary because of the Council's unreasonable behaviour in relation to its handling of the application. In particular, that it failed to take into account emerging development plan policy as a material consideration when assessing the planning merits of the submitted scheme. In addition, the applicants submit that the Council also failed to provide substantive evidence to justify its case.
5. The description of development and original planning statement clearly stated that the proposal was for self-build dwellings. The applicant's submissions also referred to the Council's emerging policy on self-build and custom built dwellings. The Council did not address the emerging policy and therefore, it failed to take into account a relevant material consideration when assessing the planning merits of the scheme.

6. However, noting the Council's concerns included the effect the development would have on the character and appearance of the area, the conflict with the spatial strategy and the lack of a mechanism to secure mitigation for a protected site, I am unable to conclude that the appeal, and the costs associated with it, could have been avoided altogether even if the Council had considered the emerging policy as a material consideration. Ultimately, for the reason set out in my decision I have found that the Council had reasonable and justifiable concerns about the impact of the proposed development, which were not outweighed by material considerations, such as the emerging policy.
7. In addition, the Council adequately substantiated its reason for refusal in its appeal statement. In particular, the statement properly articulates why, in the Council's view, the proposal would result in an unacceptable form of development and makes clear reference to the relevant policies of the adopted Local Plan. The Council have also provided updates during the appeal process to ensure the appellant is aware of the changing policy position in the District. Therefore, I am satisfied that the authority provided sufficient evidence to justify its case.
8. Furthermore, it will be seen from my decision that I have found that the development is unacceptable in terms of its effect on the character and appearance of the area and the conflict with the adopted spatial strategy. Consequently, the Council has not acted unreasonably by preventing a proposal which should have clearly been permitted.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the application for costs is refused.

G Pannell

INSPECTOR