



Costs Decision

Site visit made on 17 October 2022

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2022

**Costs application in relation to Appeal Ref: APP/P1560/W/22/3298238
Plot 6, Land rear of Holly Lodge, Betts Green Road, Little Clacton,
CO16 9NH**

- 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 Mr Sorrell for a full award of costs against Tendring District Council.
 - The appeal was against refusal of the Council to grant planning permission for the erection of one cottage style dwelling (variation to design of dwelling as approved under 18/00872/DETAIL and 20/01073/DETAIL).
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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.

The Application

3. This is a case where the committee went against the clear and unequivocal advice of its officers that the proposed development would not result in any material harm to visual amenity, the character of the area or neighbouring amenities that would warrant refusal of the application. This opinion was endorsed by the Council's Head of Planning and is therefore the professional view of the council's own specialist officer. In the face of this clear and well-reasoned advice, for the committee to come to a decision at variance with that advice, which it is entitled to do, it is required to express its reasons with clarity on the basis of proper planning considerations.
4. In the council's statement of case, the officers have endeavoured to set out some reasoning to justify the committee's decision. In doing so there is no more than a simple statement about the difference in the eaves and ridge heights of the proposed dwelling compared with the previously approved bungalow. These are the only elements of difference that are portrayed. Large parts of the statement are taken up with irrelevant matters such as the status of the development plan and the housing supply in the district.

5. The council's statement claims that the roof would be at odds with the development within which this plot sits, and that this is exacerbated by the plots position on the boundary of the development adjacent to the countryside. In doing so there is no analysis of the variety of other house types (2-storey, 1½ storey and bungalows) in the immediate vicinity, including 2-storey houses that are also adjacent to the countryside. In acknowledging that there is the same dwelling type recently approved within the same development (on plot 1), simply claiming that plot 1 is 'tucked into' the corner of the site, totally ignoring the fact that it is also next to bungalows.
6. A claim for full costs is justified since the council's refusal of permission has not been substantiated with any substantive evidence; planning permission should have been given in accordance with the clear reasoning and advice of the officer, so that no appeal would have been necessary. The council has behaved unreasonably and thereby caused the appellant to incur unnecessary or wasted expense in the appeal process.

The Rebuttal

7. Whilst it is acknowledged that the council's officers recommended approval of the application. In this instance members of the planning committee, who are entitled to their own views and are entitled to come to a different conclusion if they felt it appropriate on planning grounds, decided otherwise. On this occasion, members of the planning committee concluded that the main planning considerations identified within the report raised sufficient concerns for the balance to lie on the side of a refusal, contrary to the officer recommendation.
8. At the committee meeting it was resolved to refuse the application on the basis of the impact of a development proposal on the character and distinctiveness of an area: this can be a subjective matter. The council is satisfied that the decision issued accurately reflects the conclusion of the members of the planning committee. The council is satisfied that the statement of case submitted as part of the appeal proceedings in support of the council's case is sufficiently clear in substantiating the reason for refusal and articulating the areas of harm.
9. The Planning Committee identified the harm described and made an appropriate decision to refuse planning permission. The preconditions for an award of costs are not met and the grounds relied upon by the appellant are not supported by the advice in the guidance. The costs application should be rejected.

Conclusions

10. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. However, that does not necessarily mean that the claim for costs is justified.
11. In this case the existing permission is for a 3 bedroom bungalow, so that the only material change proposed in the appeal application is for a changed shape of roof that would be a little higher. There is no part of the council's case that the change in shape of the roof would be harmful, although 'massing' is referred to, it is only the height that is focused on. The decision that the

increase in height justifies refusal of permission was taken in circumstances where there is a wide variety of house types in the immediate vicinity, including other 1½ storey 'chalets' as well as 2 storey houses, some of which are recently permitted and are also adjacent to the open countryside. It is the properties on Harwich Road that seem to be the main focus of the committee, but again those immediately to the south-east of this development are 2 storey and single storey in about equal number.

12. Effectively the refusal reason and the justification given is simply that the increase in height of the proposal would be harmful to the character and distinctiveness of the area. No analysis of this is given as to why this would be the case when the immediate surrounding includes the variety of built form that I have described. The council's rebuttal suggests that the basis of the committee's decision can be a subjective matter and that the balance lay on the side of a refusal. However, there does not seem to have been any balancing of matters, and the officer's report certainly did not contain any indication of matters that would count against the proposal. I come to the conclusion that the refusal had no basis of genuine planning judgement behind it and not one that could be elucidated after the event, but was based on unsubstantiated concerns.
13. 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

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Tendring District Council shall pay to Mr Sorrell, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Terrence Kemmann-Lane

INSPECTOR