
Costs Decision

Site visit made on 14 February 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

**Costs application in relation to Appeal Ref: APP/P1560/W/21/3287859
Land rear of The Gables/The Towers, Clacton Road, Weeley Heath CO16
9EF**

- 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 Evershed & Mr Bouchard for a partial award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for development of five detached self build or custom build houses.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicants have made the application on substantive grounds. I address each of their points in turn.

Self-build/Custom Build

4. In determining the planning application, the Council clearly considered the self-build/custom build nature of the proposals in great detail, as made clear at Section 2 of the Officer Report. Furthermore, I concluded that even in a hypothetical situation where there was a substantial shortfall in self-build plots, the benefits of the development would not outweigh the harm. In this context, the applicants have not been put to any unnecessary or wasted expense. Furthermore, evidence provided by the applicants in relation to self/custom build statistics is by no means conclusive.

Unilateral Undertaking

5. The applicants contend that the Council failed to request a planning obligation to secure mitigation pertaining to effects of the proposal on European Sites. However, the Council's approach was reasonable given that it refused the appeal for other reasons. It would have been unreasonable to request an obligation (at expense to the applicants) and then subsequently refuse the application for other reasons.

Protected Species

6. Given my conclusions on this matter, the Council did not act unreasonably. The Council was entitled to reach a view (even in the absence of a consultation with the Ecology Officer) on the likelihood of protected species being present, based on the characteristics of the site. Indeed, that is the basis upon which I reached my own conclusions on this matter.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. As such, the application for an award of costs is refused.

Luke Simpson

INSPECTOR