



Costs Decision

Site visit made on 7 February 2023

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Costs application in relation to Appeal Ref: APP/X1545/W/22/3293818 Land to west of Primrose House, Burnham Road, Latchingdon, CM3 6HB

- 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 P Wells for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for the erection of 5 detached three-bedroom bungalows with associated access, parking and landscaping.
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Decision

1. The application for an award of full 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. The application is for a full award of costs arising from the council's unreasonable behaviour. Alternatively, the appellant seeks partial awards on the individual matters which collectively make up the case for the full award. In respect of each of these matters, the council has not provided substantive evidence to support its decision.
4. The council did not respond to the appellant's original visual impact assessment, and did not provide one of their own. No photograph or viewpoint or public vantage point was provided. The council's opinion about visual impact 'approaching from the south' is not supported by the facts or evidence. The 'Call For Sites' process found the site was considered suitable, including its sustainability credentials, its location and its landscape perspective. Yet the assessment's conclusions were given only 'little weight'. The council is in a situation of long term undersupply of housing land but acted as if oblivious to the consequences of housing undersupply.
5. The council did not sufficiently take account of the fact that the appeal decided in 2018 was for 2 storey houses, and ignored the fact that that decision found no detriment due to noise or disturbance in a scheme that was only marginally different, and that private drives are commonplace and are endorsed by the Essex Design Guide and the council's design guidance. These matters might have been resolved if the requested discussion had taken place. In addition the

officers took a contrary view to the 2018 Inspector's decision in respect of the economic sustainability objective: the Inspector stated that the development then under consideration "would support local services once the dwellings were occupied", but in respect of the current appeal it was considered that "dwellings would bring some economic benefits to the village, which may provide some support to existing services, it is considered that the benefits would be minor."

6. In a previous scheme, noted by the case officer as being for 2-bed dwellings rather than the 3-bed most needed, 'moderate' weight was given to the supply of new dwellings, this in the context of the lack of a 5-year housing supply, yet with the appeal scheme, which provides the most needed 3-bed dwellings, the weighting remains 'moderate'. And the council completely ignored the stated benefit of bungalows as being in short supply.
7. Overall, the council's position is untenable and unreasonable. This appeal was unnecessary and avoidable. On this basis, the appellant seeks an award of costs.

The Rebuttal

8. Taking each of these matters in turn, a document titled visual impact assessment did not form part of the application documentation for planning application 21/00989/FUL. A supporting statement, "Planning Support Statement with Appendices", formed part of the documentation with a section titled photographic analysis and design commentary. Photographs were provided at appendices 1 and 4. All documentation would have been examined prior to the drafting of the Officers report.
9. The officers report evaluates the visual impact of the proposal, especially at paragraph 5.3.7, referring to open countryside being lost and replaced with built form. As indicated in that paragraph, the proposed bungalows would be screened by existing built form in views from the north of the site, from Burnham Road. However, in views to the south of the site, along Rectory Lane south of its junction with Burnham Road, the bungalows would be visible due to the level terrain.
10. With regard to the 'Call for Sites' assessment the principle of dwellings on the site was accepted but more detailed considerations led to a refusal of the application as has been clearly set out in the officer's report. In respect of the housing supply and the tilted balance, at paragraph 5.2.3, the officer's report accepts that the proposal would contribute towards housing need. With regard to the difference between 2-storey houses and bungalows, visual impact was considered at paragraph 5.3.7 of the officer's report.
11. The means of vehicular access to the five bungalows would be positioned between two dwellings, Primrose House to the east and another house to the west. Given the proximity of the vehicular access to dwellings, particularly in relation to Primrose House which would have a side boundary almost adjoining the carriageway of the vehicular access, it was considered that detriment to residential amenity would be to a sufficient degree to reasonably form a reason for refusal.
12. Whilst bungalows are a form of accommodation likely to be favoured by those with mobility problems, the response to question 16 of the planning application

form indicates that the bungalows would form part of the general market for housing. The application documentation includes no indication that the needs of groups with specific housing requirements are addressed.

13. The appellant's argument for an award of costs on the basis that the council has acted unreasonably has not been adequately demonstrated. The reasons for refusal include harm to the intrinsic character and beauty of the countryside which is an accepted principle for conserving the natural environment set out in the National Planning Policy Framework. With regard to whether the decision would be considered generally so at odds with policy as to be generally thought of as being unreasonable, it is noted that the Parish Council presumably felt that refusal was reasonable in that it recommended refusal of planning permission. The council contends that it has acted reasonably.

Conclusions

14. On its face, the appellant's application for costs appears well grounded on the number of matters set out. Looking in detail at the council's response, for the most part these are assertions that matters were considered, which is only the starting point. What needs to be shown is that the consideration took into account fairly and objectively those matters and came to a balanced conclusion.
15. Just to pick out the main shortcomings of the council's consideration of the appeal application, and its response to the appeal itself, I am left to wonder how the judgement about the view from the south was reached when for the most part the roadside hedge effectively blocks views. Again, whilst the call for sites assessment did not have details of how the site might be proposed for development, it was being put forward for housing – in the appeal case, as bungalows – so that the assessment might have been expected to be given some significant weight in favour of the proposal.
16. This call for sites assessment makes the refusal on the basis of harm to the intrinsic character and beauty of the countryside more difficult to justify on the basis of the main reason for refusal. This was expressed in the first refusal reason as *"The proposed development would substantially alter the character of the area and have an unacceptable visual impact on the countryside though the urbanisation and domestication of the site, with the need for car parking, associated hardstanding and domestic paraphernalia"*. Surely a site being put forward for housing development might have been judged in the call for sites assessment on the basis that it would have a visual impact on the countryside though the urbanisation and domestication of the site, with the need for car parking, associated hardstanding and domestic paraphernalia.
17. In respect of the second refusal reason, it is of course true that the vehicular access, particularly in relation to Primrose House, would be close to the side boundary, almost adjoining the carriageway of the access. This is not an unusual juxtaposition in residential areas, where streets, rather than a private drive, often have similar proximity when serving many more than 5 dwellings.
18. The fact that the council has thought it appropriate to pray in aid the objection by the parish council, seems to me to be clutching at straws. I do not criticise the parish council, but its objection hardly amounts to a full and considered balanced judgement with reasons that is expected of the local planning authority. The council's reasoning and decision display a lack of such balanced judgement, which is especially clear in the way in which the lack of a 5-year

housing land supply was dealt with. The National Planning Policy Framework is a material matter of importance, but the officer's report does not adequately weigh the 'tilted balance' arising from paragraph 11 d) ii, and one is left with the clear conclusion that the officer's report was written on the basis of a predetermination to find reasons to refuse the proposed development.

19. 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

20. 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 Mr P Wells, 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.
21. 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.

Terrence Kemmann-Lane

INSPECTOR