The Planning Inspectorate

Costs Decision

Inquiry held on 7th–10th and 14th–16th February 2023

Site visit made on 14th February 2023

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Costs application in relation to Appeal Ref: APP/W3520/W/22/3308189 Land North of Barking Road, Needham Market, IP6 8EZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Messrs David, Marlene, Michael Willis, Perry, Watson for a full award of costs against Mid Suffolk District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of up to 279 no. dwellings (both private & affordable) with associated access, onsite parking provision and open space.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mid Suffolk District Council

2. The costs application was made orally at the inquiry. The appellant contends that the Council acted unreasonably because:

- The proposal was clearly contrary to local and national policy in relation to flooding and highway safety,

- No material considerations advanced could realistically allow the development to be permitted and so there was no reasonable prospect of the development being permitted.

The response by Mr David Willis, Mrs Marlene Perry and Mr Michael Watson

3. The response was made orally at the inquiry. The appellant responds that:

- The proposal was not in conflict with local and national policy and the approach advocated to the Sequential Test for Flooding has been supported by other Inspectors at appeal. The approach taken by the appellant was therefore not unreasonable,

- How the Council dealt with a similar application at the site in 2016 was supportive of an access in the location currently proposed. In that case the Sequential Test was not applied. It was therefore not unreasonable for the appellant to proceed in a similar basis in this case, as such matters require an element of "planning judgement".

- In making a decision as to whether to undertake flood modelling as part of the application the appellants took a proportionate approach. Such work is

expensive and could reasonably be undertaken at reserved matters stage if necessary. This approach is not unreasonable.

- The County Council acted unreasonably in failing to provide necessary information to the appellant's highways consultant prior to the submission of the application. The highways assessment was therefore based on the information that was available to the appellant at the time. Furthermore, the access proposed does not differ significantly from that which was supported by officers in the 2016 planning application.
- The national housing crisis is a material consideration in the determination of the appeal.

Reasons

4. 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.

5. The costs application hinges on whether the appellants were clearly pursuing an application which could not reasonably be granted and that in doing so did not exercise their right of appeal in a reasonable manner. Whilst I refer below to "the appellants", this relates to the case put to me collectively by the appellants' professional witnesses and Counsel.

6. Local and national policy in relation to flood risk is clear. Where flood risk is identified, the sequential test should be applied and if this is shown to have been passed, then the development, where applicable, should also pass the exception test.

7. For the reasons set out in my decision it is clear that the proposal passes neither of these tests. The sequential test was not carried out. I have found no cogent basis for "disaggregating" the development to apply a "sequential approach" to solely the access as put to me by the appellant.

8. Whether to disaggregate when applying the sequential test could be considered to be a matter of planning judgement. However, it should have been clear to the appellant that even if the sequential test had been passed there was no firm basis for concluding that the exception test did not need to be applied. The Flood Risk Vulnerability Classification[1] is not exhaustive. Nevertheless, no reason was supplied in the written submission as to why the access was considered to be "less vulnerable" or "water compatible" and therefore not subject to the exception test. Neither was this made clear during the inquiry. I was therefore provided with no sound grounds on which to conclude that the access should be treated as falling within a lower vulnerability category than the development which it serves. Consequently, I was provided with no firm basis for concluding other than the exception test must apply.

9. The shortcomings of the access arrangements are interrelated with the issue with flooding. The application included means of access. This was shown as a main vehicular access to the south and an emergency vehicle and cycle/footpath access to the north. The parties were in agreement that the proposed main access point lay within flood zone 3 and I was given no evidence to suggest this might change. The proposed access design made no

[1] Annexe 3 NPPF

provision to respond to this. Indeed, as flood modelling had not been done, we don't know what measures may need to be employed. As the application sought to have access approved, the detailed design of the access, to include any necessary measures to keep residents safe, could not reasonably be left to a later point by means of a condition. This matter should have been evident to the appellant. Instead, there appeared to be some confusion at the Inquiry as to whether the application was seeking approval for access.

10. The appellant's claims that the development would be safe for its lifetime were dependent upon the use of the northern access which was only proposed for use by bike, foot or emergency vehicle. However, no swept path analysis had been submitted to demonstrate the access to the north was safe for use by emergency vehicles. the exception test would have been failed had it ever been applied. For the reasons set out in my decision letter I explain why it would not be appropriate to deal with these matters by condition.

11. The Framework[2] is clear that in cases where development is contrary to policies within it relating to flood risk, planning permission should be refused and that the "tilted balance" does not apply. It should therefore also have been clear to the appellant that the other material considerations put forward in support of the development were not relevant in this case and the development would not succeed.

12. I have considered whether the history of the site, and whether the fact that officers recommended approval is 2016 for a scheme with the access in the same location was a material factor that may have misled the appellants into thinking that this application would succeed. However, whatever led officers to recommend approval at that point in time, the fact remains the application was refused by the Council's elected members on the grounds of flood risk. Furthermore, the application made in 2020[3] had the same access point as that proposed in this application and was refused on flooding and highway safety grounds. The more recent views of officers and statutory consultees and the reasons for it would therefore have been abundantly clear.

13. All of the above leads me to the view that the scheme was clearly contrary to local and national policy and there were no material considerations that could reasonably be taken to indicate that such policy would be set aside in this case. As a result, the case had no reasonable chance of succeeding. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

14. 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 Mr David Willis, Mrs Marlene Perry and Mr Michael Watson shall pay to Mid Suffolk District Council 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.

[2] NPPF 2022 Paragraph 11 footnote 7
[3] DC/20/05046

15. The applicant is now invited to submit to Mr David Willis, Mrs Marlene Perry and Mr Michael Watson, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Anne Jordan

INSPECTOR