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## Costs Decisions

Site visit made on 23 May 2023

**by L Fleming BSc (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> August 2023**

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### **Costs application A in relation to Appeal Ref: APP/P1560/W/22/3303049 Land rear of Some View and Roborough, Church Hill, Ramsey, Harwich, CO12 5EU**

- 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 Messrs N. Neale and S. Geisha for a full award of costs against Tendring District Council.
  - The appeal was against the refusal of outline planning permission for erection of five bespoke self-build/custom built dwellings (concurrent application with a proposal for an additional car park for the Two Village primary School).
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### **Costs application B in relation to Appeal Ref: APP/P1560/W/22/3303051 Land adjacent to Two Village School, Church Hill/Mayes Lane, Ramsey, Harwich, CO12 5EU**

- 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 Messrs N. Neale and S. Geisha for a full award of costs against Tendring District Council.
  - The appeal was against the refusal of planning permission for provision of an additional car park for the Two Village primary School (concurrent application with proposal for the erection of 5 bespoke self-build/custom built dwellings).
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## **Decisions**

### **Costs application A - Appeal Ref: APP/P1560/W/22/3303049**

1. Application A for an award of costs is refused.

### **Costs application B - Appeal Ref: APP/P1560/W/22/3303051**

2. Application B for an award of costs is refused.

## **Reasons**

3. The Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

### *Application A*

4. The appellant alleges that the Council has acted unreasonably by failing to substantiate its third reason for refusal which related to the lack of a duly executed planning obligation to secure recreation infrastructure mitigation. It is alleged the Council should not be seeking such contributions and the Council
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continuing to request such has caused unnecessary and wasted expense in the appeal process.

5. Secondly, it is also alleged the Council have failed to fully consider the requirements of Policy LP7 of Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (2021 & 2022) (LP) which relates to self-built and custom-built homes. Moreover, it is alleged, had the Council properly done so, it would not have found conflict with Policy LP7 of the LP.
6. Dealing firstly with the planning obligation grounds. Regulation 122(2) of the Community Infrastructure Levy Regulations (2010) (the CIL regulations) states among other things that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is among other things necessary to make the development acceptable in planning terms.
7. Paragraph 6.5 of the appellant's Planning and Heritage Statement, dated May 2019, indicates at that time, that there was no objection to entering into a unilateral undertaking (UU) to secure appropriate financial contributions towards mitigation. This clearly, indicated to the Council at that time, that the appellant's were willing to provide a UU to secure contributions towards recreation infrastructure mitigation. The full details of any relevant correspondence between the Council and the appellant between May 2019 and the drafting of the Officer Report (OR), dated 14 January 2022, are not before me.
8. However, the OR identifies a local deficit in local recreation provision and says contributions would be required and put specifically towards an additional play facility on land off Lodge Road behind the Two Village Primary School. There was no UU provided at that time and it reasonably followed that the lack of a UU to secure such recreation mitigation which the Council had identified was necessary, subsequently formed part of the Council's reasons for refusing the proposed development.
9. The appellant's appeal statement (July 2022) says, in summary, at paragraph 3.19 that following representations made regarding the terms of Policy HP5 of the LP it was understood that the Council will no longer require a financial obligation towards open space and recreation for this site. It goes on to say, it is trusted that the Council will confirm this situation as early as possible to avoid further time spent on this matter.
10. I accept Policy HP5 of the LP was adopted after the OR was written. However, no detailed evidence is provided to dispute the position presented in the Council's OR, specifically in terms of the need for the specific identified infrastructure to mitigate the impact of the proposed development. There is also no correspondence before me, which indicates the Council have ever altered its position on this case with regard to recreation infrastructure mitigation set out in the OR in light of the adoption of section 2 of the LP. In fact, in its letter dated 29 November 2022 submitted with the appeal documents, the Council drew attention to Policy DI1 of the LP, cited its provisions and maintained its position that a contribution would be required as indicated in the OR.
11. I accept Policy HP5 of the LP, clearly states that all new developments of 11 or more dwellings on sites of 1.5 hectares and above will be expected to provide a minimum of 10% of the gross area as open space. I have also considered the

- relevant correspondence. The justification to Policy HP5 of the LP also makes clear that open space provision should be included as part of all residential developments involving sites of 1.5 hectares in size or greater. Without substantive evidence to the contrary, as Appeal proposal A falls below the relevant thresholds, I find there is no conflict with Policy HP5 of the LP through the lack of provision of a contribution towards open space, sport and recreation provision in the area.
12. However, Policy DI1 of the LP does not have the same thresholds. It states that all new development should be supported by, and have good access to, all necessary infrastructure. It says where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the local planning authority and the appropriate infrastructure provider. Such measures may include financial contributions towards new or expanded facilities and the maintenance thereof. It says for the purposes of this policy, the widest reasonable definition of infrastructure and infrastructure providers will be applied. Thus, it seems to me, Policy DI1 of the LP relates to all types of infrastructure including recreation and all types of development irrespective of size where additional infrastructure capacity is deemed necessary to make it acceptable.
13. It therefore follows, that insofar as is relevant to Appeal A, there could be a conflict with Policy DI1 if additional infrastructure was demonstrated to be necessary to make the proposal acceptable and was not proportionately provided. In this case, although brief, the only substantive evidence on whether there is a need for recreational infrastructure mitigation to make Appeal proposal A acceptable in planning terms is detailed in the Council's OR as explained above. The appellant has provided no detailed evidence to demonstrate that Appeal proposal A would not conflict with Policy DI1 of the LP or to dispute the specific infrastructure requirement explained in the OR.
14. I have dismissed Appeal proposal A for other reasons. If the matter would have been determinative, I would have sought further evidence from the Council to demonstrate compliance with the CIL Regulations and then sought the appellant's response. However, this was not necessary, and overall, against all this background and having regard to the other appeal decisions put before me, noting specifically the lack of detailed substantive evidence from both parties on the need for the specific recreation related planning obligations, I do not find the Council has acted unreasonably.
15. Turning my attention to the grounds relating to the application of Policy LP7 of the LP. The OR, under the headings "Principle of Development" and "Character and Appearance, and Landscape" clearly set out the main relevant provisions of Policy LP7 of the LP and finds harm for reasons primarily relating to effects on the character and appearance of the area. I have also found harm to the character and appearance of the area and conflict with Policy LP7 of the LP. Whilst I note the point about the Council not providing a detailed rebuttal of all the relevant points made in the appellant's appeal statement, the Council's reasons for finding conflict with Policy LP7 of the LP, whilst brief, are proportionate and clear. I therefore find the Council has acted reasonably in its consideration of Policy LP7 of the LP.

*Application B*

16. The appellant alleges that the Council has acted unreasonably by not providing evidence to substantiate its reason for refusal relating to the impact on the grade I listed St Michael's Church (the Church). Furthermore, it is alleged that the Council should have been aware a condition could be imposed on land owned by the appellant to secure appropriate landscaping, which in the appellant's view would have secured appropriate mitigation if necessary.
17. Furthermore, it is also alleged the Highway Authority should have provided further evidence to substantiate its comments relating to the reasons for refusal relating to highway impacts. Particularly, it is alleged the Highway Authority should have responded to evidence submitted with the appeal relating to a legal covenant.
18. Dealing first with the heritage related grounds. The OR simply explains the Council were concerned with regard to the car park projecting into the adjacent open countryside and its associated visibility within the historic landscape setting of the Church. However, these concerns are consistent with my own findings. The Council also clearly acknowledges landscaping could be secured by condition by suggesting such conditions in the event that the appeal be allowed. However, also consistent with my own findings, clearly, based on the evidence, the Council were not satisfied any landscaping conditions could overcome the harm to the character and appearance of the area and the setting of the heritage asset it had identified.
19. Even though the Council did not raise concerns with regard to the impact of the scheme for five dwellings on the setting of the Church, the proposed car park is a different scheme relating to a different site. The Council has not therefore acted unreasonably in reaching different conclusions on two different sites and schemes irrespective of the format of the original planning applications submitted to the Council.
20. Turning my attention to the highways related grounds. Whether or not the Highway Authority acted illegally or not in responding to the consultation on the planning application does not relate to the planning merits of this case and is not a matter for my detailed consideration. However, even though, I have not shared the Council's concerns with regard to highway safety, the Council's concerns with regard to highway impacts are not complex and are clearly explained in the OR.
21. Thus, irrespective as to whether the Council responded to the appellants information about a legal covenant, in my view its reason for refusal on highway grounds was proportionately substantiated by the evidence in the OR. Thus, I find unreasonable behaviour resulting in unnecessary expense has not been demonstrated.

## **Conclusion**

### *Applications A and B*

22. For the reasons given, with respect to both applications A and B, unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Both applications for an award of costs should therefore be refused.

*L Fleming*

INSPECTOR