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## Costs Decision

Site visit held on 22 August 2023

**by P Jackson B Arch (Hons) RIBA**

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

**Decision date: 15 September 2023**

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### **Costs application in relation to Appeal Ref: APP/P1560/W/22/3296878 Land north of Elm Lane, Little Clacton, Essex**

- 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 The Trustees of the Carter family for a full award of costs against Tendring District Council.
  - The site visit was in connection with an appeal against the refusal of the Council to grant planning permission for erection of three dwellings.
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### **Decision**

1. The application is refused and no award of costs is made.

### **The submissions**

2. The submissions were made in writing and responded to in writing. A rebuttal to the Council's response was made in writing.

### **Reasons**

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG says that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing or failing to determine planning applications, or by unreasonably defending an appeal. An example might be preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or acting contrary to, or not following, well-established case law; or not reviewing their case promptly following the lodging of an appeal against refusal of planning permission or an application to remove or vary one or more conditions, as part of sensible on-going case management.
4. The main points made by the appellant can be summarised as:
  - i. The Council failed to demonstrate how the development of just 3 dwellings is contrary to the spatial strategy in the Local Plan, given its sustainable location and the rather unusual nature of the site set within an enclave created by other housing; and
  - ii. No attempt has been made to justify the harm suggested would be caused to the neighbouring listed building, which would be extremely limited.

5. The conflict with the recently adopted spatial strategy in the LP is set out clearly and concisely in the reasons for refusal and defended in the Council's statement of case. There is no meaningful comparison with other cases cited by the appellant. The site is not infill but at the end of an existing ribbon of development outside the defined settlement boundary on the Council's proposals map which forms part of the adopted development plan.
6. The heritage advice received by the Council from Essex Place Services clearly sets out the methodology employed by the Historic Environment Team in demonstrating the potential for harm to the setting of Swains Farmhouse including reference to well established advice from Historic England. The site visit confirmed the potential for harm to be caused and that potential had been identified before in relation to the previously permitted development for 5 houses to the west. It cannot have come as a surprise to the appellant that the proposed scheme for three dwellings much closer to the farmhouse would be likely to lead to closer attention to the potential for harm to setting. Moreover, it is entirely unclear that there would be 'no view' of the proposed development from the farmhouse as claimed by the appellant- that was not the situation as I saw it on the ground with the vegetation in full leaf. Other points made by the appellant on this ground are simply a repetition of their case at appeal.
7. I do not find that unreasonable behaviour has been demonstrated that has directly caused the appellant to incur unnecessary or wasted expense. For the above reasons, the application fails.

*Paul Jackson*

INSPECTOR