



Costs Decision

Site visit made on 10 July 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Costs application in relation to Appeal Ref: APP/P1560/W/22/3308970 Land South of Frinton Road, Thorpe Le Soken CO16 0HS

- 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 Oakland Country Homes for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for the development of six bungalows.
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Decision

1. The application for a full award of costs is refused but a partial award is allowed.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. The PPG sets out examples of behaviour by local planning authorities which may give rise to an award of costs¹. The applicant asserts that in this case the Council failed to produce evidence to substantiate each reason for refusal and was vague, generalised or inaccurate in its assertions about a proposal's impact, unsupported by any objective analysis. The applicant relates these grounds to the two reasons for refusal identified on the Council's decision notice. I shall deal with each in turn.
4. The first reason for refusal relates to the principle of development and cites Policies SP3 and SP7. An assessment of the scheme against these policies requires consideration of the characteristics of the site and its relationship with the settlement.
5. Whilst both the reason for refusal and the Delegated Decision Officer Report (DDOR) identify that the majority of the appeal site is outside of the defined settlement boundary, the assessment appears to go no further, relying on the five year housing land supply position as a reason not to consider any other part of Policy SP3. No objective analysis as to how the proposal, on a site that adjoins the settlement boundary, would impact on the scale, sustainability and existing role of the settlement or where relevant across the wider area is provided.

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306

6. The Council also failed to provide any substantive evidence that identifies how the proposal would conflict with the place shaping principles set out under Policy SP7. The DDOR concludes that it would 'represent an acceptable scale, layout and appearance that will not appear harmful to visual amenity or the character and appearance of the street scene'.
7. The Council's Statement of Case largely refers to the DDOR and does not explain further the conflict it had found with either policy in this regard. In response to the applicant's cost application, the Council took the opportunity to introduce another development plan policy and appeal decision. I have had regard to this background, but for the reasons given in my appeal decision, this did not assist the Council's case.
8. The second reason for refusal relates to a lack of affordable housing provision contrary to Policy LP5. I understand that the applicant is frustrated by the lack of engagement with the Council about this particular issue, which led to a financial viability assessment being submitted with the appeal.
9. Whilst I am sympathetic to the applicant in relation to the lack of communication on this issue, I agree with the Council in its assessment that the appeal site forms part of a larger site for the purposes of identifying whether an affordable housing contribution would be required. Whilst brief, the DDOR does set out the reasons for the approach the Council took on this matter including how the sites are linked in terms of ownership and physical connectivity. I therefore find that the second reason for refusal, despite the lack of engagement by the Council, was justified and reasonable.

Conclusion

10. In light of the above, I conclude that unreasonable behaviour has been demonstrated and that a partial award of costs is justified as the applicant has incurred unnecessary or wasted expense in addressing issues that were not fully substantiated by the Council.

Costs Order

11. 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 Tendring District Council shall pay to Oakland Country Homes 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.
12. The applicant is now invited to submit to Tendring 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.

G Dring

INSPECTOR