The Planning Inspectorate

Costs Decision

Site visit made on 28 August 2024

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 October 2024

Costs application in relation to Appeal Ref: APP/X3540/W/24/3342076
Land West of PROW 21, Woods Lane, Melton, Suffolk

- 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 Pelham Structures Ltd for a full award of costs against East Suffolk Council
- The appeal was against the refusal of outline planning permission for nine self-build and custom build homes.

Decision

1. The application for an award of costs is refused.

Reasons

2. The application for costs seeks, in essence, a full award of costs on the basis that the Local Planning Authority (LPA) acted unreasonably by applying a too rigid definition of self-build and custom build housing, seeking affordable housing provision contrary to legislation and case law; requiring details that could reasonably be secured by condition and introducing an in-principle objection at an unreasonably late stage.

3. The application for an award of costs is therefore a combination of both substantive and procedural issues. The 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 expense in the appeal process.

4. PPG paragraph 16-049-20140306 sets out the scenarios where unreasonable behaviour by an LPA may give rise to a substantive award of costs. This includes, amongst other things, preventing development which should clearly be permitted, refusing planning permission on a planning ground capable of being dealt with by conditions, and acting contrary to, or not following, well-established case law. Separately, PPG Paragraph 16-047-20140306 sets out the scenarios where unreasonable behaviour by an LPA may give rise to a procedural award of costs. This includes, amongst other things, introducing fresh and substantial evidence at a late stage.

5. The appeal site was subject to a previous appeal decision in 2022[1] in relation to an outline proposal for 27 self-build dwellings. The 2022 appeal found, amongst other things, that the site was contrary to the spatial strategy of the

[1] APP/X3540/W/21/3276418

development plan, would result in unacceptable harm to the character and appearance of the area and was required to provide affordable housing.

6. On the issue of whether self-build or custom build housing, the matter is finely balanced. In my separate appeal decision, I have expressed some sympathy with the LPAs position that the appeal proposal, by virtue of layout and scale not being reserved matters, would remove a number of primary inputs into the design of the dwellings, that I would imagine a notable number of initial occupiers of such housing would seek some design control or influence over. However, on a closer reading of the LPAs Custom and Self Build Housing Supplementary Planning Document May 2024 (SPD) I have noted that what the appellant is proposing would be at the margins of the LPAs own definition of custom build. The LPA has clearly set out in its appeal statement of case why it considers what the appellant is proposing should not be regarded as self-build or custom build. It has not acted unreasonably in this regard.

7. Turning to affordable housing provision, this was dealt with in some detail in the 2022 decision, by reference to the same Suffolk Coastal Local Plan (SCLP) and evidence that remains extant for this appeal. Whilst a recently re-determined appeal decision in Essex has arrived at a different conclusion, the decision is relatively brief in relation to paragraph 66 of the NPPF. The high court judgment[2] that triggered the redetermination does not assist the appellant in terms of the application of this specific part of national planning policy. A thorough analysis was set out in the 2022 appeal, which the LPA could have reasonably had regard to when considering its statement of case for this appeal. Having looked again at this matter, I have arrived at a same analysis and conclusion on NPPF paragraph 66 as the 2022 appeal decision for this site. Moreover, the LPA was entitled to have regard to its own development plan and SPDs, all of which contain clear and up-to-date local policy and guidance regarding affordable housing on self-build and custom build proposals. Again, the LPA has fully set out its position in its statement of case for the appeal and engaged promptly and cogently when invited to comment on the recent Essex appeal decision and High Court judgment. The LPA not acted unreasonably in this regard.

8. On various technical matters, it should be borne in mind that the appellant pursued an appeal against non-determination, very shortly after the conclusion of an agreed extension of time with the LPA. Consequently, as a matter of procedure, there can be no criticism of unreasonable behaviour on the part of the LPA that some technical matters were only resolved during the appeal, following ongoing engagement with statutory consultees. From everything that is before me the LPA has engaged constructively on these matters and accepted that they could be dealt with by condition without prevarication or delay. Again, unreasonable behaviour on the part of the LPA has not been demonstrated.

9. Finally, the appellant expresses a grievance that flood risk and sequential approach has only been raised as part of the LPAs appeal statement of case and was not an issue for the 2022 appeal. As set out separately in my decision, matters have materially changed since March 2022 with updates to the Planning Practice Guidance to assist interpretation of NPPF paragraphs 167 and 168. In response to the LPAs statement of case, the appellant asserted

[2] [2023] EWHC 2588 (Admin)

that the PPG was last updated in 2017, which is not the case. In fairness, it is the LPA, rather than the appellant, that have submitted evidence regarding whether a sequential test is required or not. The appellant describes this as "strange" but understandably the LPA has sought clarity on the matter as part of the appeal process. I do not consider that to be unreasonable behaviour and there is nothing before me to indicate that it has caused the appellant to expend any resources or than to briefly resist undertaking a sequential test as a matter of principle.

10. As set out in my separate decision, the NPPF and PPG are clear that the sequential test is required where there is a high risk from any source of flooding, including surface water flooding. In a non-determination case, the LPA has not acted unreasonably in confirming their position on a main issue until their statement of case. The LPAs statement of case on flood risk sufficiently sets out the evidence as it relates to the appeal site and the latest local and national planning policy. Again, there has been no unreasonable behaviour on this matter.

11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.

12. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.