



Costs Decision

Site visit made on 4 December 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Costs application in relation to Appeal Ref: APP/P1560/W/24/3342836 Land at 82 Jaywick Lane, Clacton-On-Sea CO16 8BB

- 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 Mr Thompson of CTF Care Ltd for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for the erection of 9 bungalows with associated access, car parking, landscaping and other associated development.
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Decision

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

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. The applicant contends multiple substantive grounds, which I shall address in turn.

Site Aggregation

3. The applicant considers that with respect to the Council's approach to site aggregation, they failed to determine the application in accordance with the submitted documents, applied non-existent or outdated local plan policies, and did not have regard to the National Planning Policy Framework ('the Framework') (2023). My decision explains in detail why I found with the Council that the appeal site and proposal would form part of a development proposal on the larger site. I therefore find no unreasonable behaviour in the Council's approach to determining the application in this regard.

Fallback

4. The Council's officer report did not explicitly consider the appeal proposal against the fallback positions, but this was addressed to some extent in the appeal evidence. The Council explained that the fallbacks do not waive the requirement for affordable housing, a position with which I agree. I also found that only very limited evidence was provided in order to enable me to make a full comparison of the harms and benefits of the fallbacks against the appeal proposal. As such, I do not find the Council's approach to the fallbacks to be unreasonable overall.

Design Policies

5. The applicant challenges the scheme's refusal for design reasons, because it closely followed the design parameters permitted on the adjacent sites. Within this, they contend that the design policies have not changed as significantly as identified by the Council, such that this change in approach is unwarranted. My decision outlined the harmful impact the scheme would have on character and appearance. I thus find it was not unreasonable of the Council to seek high quality design in considering the proposal on its own merits with reference to its specific context, layout, and design, and also to incorporate the benefit of hindsight following the construction of the adjacent developments.

Drainage

6. The 4th reason for refusal relates to a failure to demonstrate the development's suitability for infiltration of surface water and flood storage, or sufficient drainage capacity. The applicant considers this unreasonable as this relevant information was submitted to the Council in August 2023, two months prior to the refusal, with the only additional information submitted with the appeal being a trial pit excavation and infiltration test. They also suggest that the scheme amendments meant it was no longer a 'major' proposal, and so drainage matters could instead have been addressed via conditions.
7. However, I am content that the level of information needed to address drainage matters is for the Council's own judgement, such that the additional information submitted with the appeal appears to have been the 'tipping point'. This has led to the Council identifying that drainage may now be addressed by suitably worded planning conditions. Indeed, the Council notes that the details still remain somewhat imprecise. I also do not dispute that the Council found some ambiguity in respect of the scheme's classification as major or minor, based on the amendments made over its lifetime and related application form inaccuracies relating to its site size.

Play Space Improvements

8. The 5th reason for refusal identifies relates to a lack of financial contribution toward play space improvements. The Council no longer seeks to defend this due to a reserved matters application for 475 dwellings at Rouses Farm, which includes a large area of public open space with a locally equipped play area in reasonable proximity to the appeal site.
9. The applicant considers this reason to be highly improbable, submitting instead that the change in approach results from the applicant's appeal evidence which questioned whether the contribution would meet the provisions of the CIL Regulations 2010, the Framework, and the Planning Practice Guidance.
10. However, I find the Council's explanation to be reasonable, in that the local need for play space will now be met in another way. The Rouses Farm outline permission was granted in January 2024, after the appeal application refusal in October 2023, and its reserved matters was submitted in May 2024. I do not see why the Council should have considered this change in circumstances in relation to the appeal site any earlier than as it did so, in accordance with the required timescale.
11. I note that reason for refusal 5 was a surprise to the applicant, who had no prior request from the Council for any financial contribution. While this clearly

does not appear best practice, I also find it very unlikely that such a request would have resulted in the applicant making such a contribution, such that the potential reason for refusal would have subsequently fallen away. This is because of the applicant's maintained disagreement in principle that the proposal was above the relevant 11 dwelling threshold, and that the contribution would not meet the legislative provisions.

12. Linked to this, the applicant's particular concern is that the Council failed to recognise the reduced scale of the proposal, as the consultation response from the Public Realm team relates to the superseded development of 15 dwellings. However, that consultation response identified the levels of deficit of nearby facilities and open space areas, and those which should be improved based on distance from the appeal site. An additional consultation for the 9 bungalow scheme would have resulted in the same response, on the basis of the planning authority's position that the site should be aggregated with the larger site and thus considered to be over 11 dwellings.
13. I also take no issue that the Council cited its 2017 Open Space Strategy in the decision notice, being only in the context of repeating the relevant policy wording, which also references 'any future update' to that Strategy.

Length of Application Determination Period

14. While I understand the applicant's frustration with the time taken to determine the application, the development was significantly amended at least 3 times during that period. I therefore cannot find that the delays were entirely caused by the Council being unreasonable. Each amendment would have required reconsideration of revised information and plans, and resulted in new issues raised. Extensions of time were sought and agreed, instead of the Council progressing to a refusal.
15. Notwithstanding this, the applicant has not explained how the length of the application determination period has led to any specific wasted costs during the appeal process.

Conclusion

16. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L N Hughes

INSPECTOR