



Costs Decision

Site visit made on 9 March 2022

by Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3281036 Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA

- 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 K Burrows for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for: construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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 Application

3. The unreasonable behaviour is substantive (PPG para 046) and concerns elected Councillors consideration of the planning application at two planning committees and the resulting two unsubstantiated reasons for refusal. The background of the need to threaten Judicial Review in order to correct a serious matter of pre-determination at the first committee meeting, whilst not relevant to the planning merits of the appeal, it does provide the context for the subsequent refusal of planning permission. The same cohort of councillors at the subsequent District Planning Committee manufactured unsubstantiated reasons for refusal; and the pre-determined councillor from that cohort is the one who required the application to be determined at planning committee. That councillor is also a town councillor, and the Town Council objected to the application.
4. The relevance of the council's actions at application stage as material to a costs award is confirmed in paragraph 33 of PPG, viz: "behaviour and actions at the

time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded."

5. While the Council, through its Members, can of course choose to set aside the advice of its professional officers, in defending its decision it must substantiate all objections using evidence (paragraph 049 of the PPG). There simply is no evidence to support the refusal of planning permission and a substantive award is therefore sought (PPG paragraph 031). In relation to the first reason for refusal: alleging that the design proposed is incongruous and contrived, this amounts to a vague and generalised assertion about the development's impact that objectively analysed does not stand proper scrutiny (PPG paragraph 049). There was no debate about scale, bulk or massing at all: these were simply three words spoken by a single councillor once. A brief comment was made concerning the lack of windows in the rear wall of the proposed bungalow, but this was made in relation to living conditions of new residents, and not design impacts of the character and appearance of the area. The Committee did not further debate the design of the dwelling.
6. In relation to the second reason for refusal, the allegation that the proposed bungalow would result in a material loss of outlook cannot be substantiated. It is not sufficient for the Council to argue that the roof of the proposed bungalow could be seen from vantage points within Orchard House or its gardens. The allegation is one of material harm to outlook and so material harm must be demonstrated to properly defend the reason for refusal, but has not been so evidenced. The council has failed to substantiate the reason for refusal (PPG para.049).
7. The council's planning officers worked with the applicant during the application process to address potential issues concerning design, the quality of the accommodation, and impacts on neighbours, which culminated the council's chief planning officer recommending approval, with a clear report to guide members.
8. The council has not exercised sound planning judgement and has caused unnecessary expense, and delayed a development that should have been permitted to proceed. All this in the context of a council that cannot demonstrate a 5 year housing land supply. Had the council behaved reasonably, the appeal would not have been necessary. The appellant has accordingly been put to the unnecessary expense of appealing (i.e., wasted expense in the entire appeal process - PPG paras. 030 and 032). Accordingly, a full award of costs (in the meaning of such set out in PPG para. 040) against the Maldon District Council is justified and is requested.

The Rebuttal

9. No response has been provided by the council.

Conclusions

10. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. As will be seen from my decision, on the issue of design I noted that there was no specific criticism by the council, and for my part I considered that the proposed dwelling relates well to the character and appearance of the surrounding area, making a positive

contribution to it. This judgement might not be shared by others, but any alternative view must be supported by reasons. That was not done in this case.

11. Again, in relation to the second issue, the council has not explained how the alleged loss of outlook to the Orchard House occupants would result from the appeal proposal, and I was left to conjecture what form of loss might be involved.
12. I concluded that both refusal reasons in the case had not been substantiated, and did not form any justification for the refusal of planning permission.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Mr K Burrows 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.

Terrence Kemmann-Lane

INSPECTOR