

Costs Decision

Hearing held on 26 July 2016

Site visit made on 25 July 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 20 September 2016

**Costs application in relation to Appeal Ref: APP/Y2003/W/16/3145930
Seven Lakes Industrial Estate, Ealand, North Lincolnshire DN17 4JS (Grid
Ref: 478213 Easting 411063 Northing)**

- 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 Colin Muscroft for a full award of costs against North Lincolnshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a residential development on land west of A161 at Seven Lakes Industrial Estate.
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Decision

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

Reasons

2. The Planning Practice Guidance 2014 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
 3. The application for costs was made by the applicant with reference to a refusal to grant permission for a residential development of 8 no. dwellings. The applicant believes that the Council acted unreasonably because it prevented development that should have been permitted, failed to substantiate its case on appeal, relied upon generalised assertions, failed to determine similar cases in a consistent manner and persisted in objecting to an element of the scheme that a previous Inspector found acceptable. Taken together these perceived failings risk an award of costs on substantive grounds.
 4. Although I have allowed the appeal on the basis that a deliverable 5 year housing land supply cannot be demonstrated, the Council maintain that this was not the case at the time it determined the original application. As a consequence, they are of the opinion that the housing policies of the development plan carried full weight at the time and clearly indicated that the scheme was not in a suitable location. As the scheme was not in accord with the development plan and its policies were not out-of-date I note that there was no presumption in favour of sustainable development despite the fact that the Council acknowledged that some sustainable development benefits would
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accrue from the scheme. This is clearly acknowledged in the case officer's report.

5. I acknowledge the analysis put forward by the appellant in relation to the deliverability of individual sites and the fact that another Inspector concluded that the Council only had a 1.5 year supply of deliverable housing sites in October 2014. However, the case officer's report to the planning committee in September 2015 clearly indicated that this was no longer the case on the basis of a revised annual housing land supply estimate. I acknowledge that the estimate was published shortly after the previous Inspector's decision and that its validity was disputed by the appellant. However, the Council were nevertheless entitled to rely upon this information. Moreover, a report by an examining Inspector on the allocations DPD¹, published in February 2016, did not take issue with this estimate and also found the Council's approach to the shortfall to be sound. Consequently, I am satisfied that the Council did not refuse development that should have otherwise been permitted. This is because it determined the application in accordance with specific development plan policies that carried full weight at the time of its decision. Given the above, I conclude that the Council acted reasonably in this matter.
6. I now turn to whether or not the Council substantiated its case on appeal and the alleged use of generalised assertions. The Council submitted a full appeal statement with supporting documentation and I am satisfied that a wholly appropriate level of detail was provided in relation to why the proposal would be contrary to development plan policies. The policies and their relevance to the refusal are clearly laid out in paragraphs 3.2-3.6 of their appeal statement. The material harm that would be caused is implicit in the wording and needs no further explanation in my mind. This is because the harm was clearly related to the fact that the aim of these policies is to ensure that new housing is located within existing development limits in order to maximise sustainable development benefits and to safeguard the character and appearance of areas beyond those limits.
7. Consequently, I can find no vague or generalised assertions in the appeal statement. The reason for refusal is clearly stated and obvious from any cursory inspection of the relevant documents. Nor do I find that the Council failed to substantiate its position with regard to the deliverable five year housing land supply given the fact that it submitted the examination report for the emerging plan² on appeal as well as full details of the sites that contributed to the site allocations.
8. Notwithstanding the fact that I found that sustainable development benefits would arise and that the spatial integrity of the development plan would not be materially undermined, the Council nevertheless acted appropriately when it determined the application in accordance with a wider range of development plan policies, as it was required to do by law. Had they acted in a contrary manner this would have undermined the Government's desire for a genuinely plan-led system. Given the above, I conclude that the Council acted reasonably in these matters.

¹ North Lincolnshire Local Development Framework Housing and Employment Land Allocations Development Plan Document 2016

² Report on the Examination into the North Lincolnshire Housing and Employment Allocations Development Plan Document, 19 February 2016 (PINS/Y2003/429/5)

9. I now turn to whether the Council failed to determine the application in a similar manner to the neighbouring site which was allowed on appeal³. There is clearly a high degree of similarity between the two schemes, both in terms of the residential nature of the proposals and their sustainable development benefits. However, the context for the Council's refusal of the current scheme was not the same. This is because it relied upon evidence that a deliverable 5 year housing land supply was present. This was not the case when I arrived at my decision nor was this the case when the previous Inspector arrived at his decision. Notwithstanding its disputed nature, I do not find the fact that the Council relied upon an updated annual estimate for housing land supply either unreasonable or exceptional. Consequently, I do not find that the Council persisted in objecting to a scheme that was found to be acceptable by another Inspector or that it failed to determine these cases in a similar manner. The different circumstances are clearly laid out in the Council's statement of case in paragraphs 5.16 – 5.19. Given the above, I conclude that the Council acted reasonably in this matter.
10. Having weighed all the evidence before me, I am satisfied that the Council acted reasonably in all respects. As such, the appeal could not have been avoided and no unnecessary or wasted expense was consequently incurred. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

Roger Catchpole

INSPECTOR

³ APP/Y2003/A/14/2221377