The Planning Inspectorate

Costs Decision

Inquiry held on 24 January 2017

Site visit made on 27 January 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 22 March 2017

Costs application in relation to Appeal Ref: APP/P3420/W/16/3149399 Tadgedale Quarry, Mucklestone Road, Loggerheads, Newcastle-under-Lyme TF9 4DG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Renew Land Developments Ltd for a partial award of costs against Newcastle-Under-Lyme Borough Council.
- The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 128 dwellings (including details of access).

Decision

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

Basis for the Submissions

2. The Appellant's case was made in writing. The Council's response was made in writing and orally at the Inquiry, and the Appellant made some further points orally. The following sections summarise the points made.

The submissions for the Appellant

3. The Council decision is inconsistent with its officer's advice presented twice to Committee for the application subject to appeal and once for a subsequent application. The Highway Authority also recommended approval. The report on the subsequent application was particularly unequivocal that permission should be granted. Members had no reasonable grounds to disagree with the officer advice.

4. The Appellant's evidence on accessibility to services is based on nationally recognised thresholds, including the 2 kilometre (km) distance referred to in Manual for Streets (MfS)[1] and documents published by the Institution of Highways and Transportation (IHT). These standards have informed decisions on many appeals, which have all referred to the 2 km distance as if it constituted guidance. The Council has not cited any alternative nationally recognised standards against which to assess the proposal.

5. The walking distances between the site and facilities in Loggerheads are entirely consistent with the national standards. The distance to bus stops is

[1] 'Manual for Streets', Department for Communities and Local Government/Department for Transport, 2007 - CD13.2, paragraph 4.4.1

only 600 metres and key areas of Newcastle-under-Lyme and Market Drayton are within an acceptable 60 minute travel time by bus from the site.

6. The Council's approach is inconsistent with its approval of development on Mucklestone Road (the 'Muller site') and the recommendation of its officers to approve a development at Eccleshall Road. Whilst the Muller site is closer than the appeal site to the village centre, it is further from St Marys Church of England (CE) School. All 3 sites have similar accessibility to employment, leisure and weekly shopping outside Loggerheads. Having approved the Muller scheme it was not open to Members to reasonably refuse the appeal proposal on transport accessibility grounds.

7. The Council's decision to refuse permission was inconsistent with its identification of the appeal site as being developable for housing in its Strategic Housing Land Availability Assessment (SHLAA) documents, the Site Allocations and Policies Local Plan Issues and Options Paper (2012) and the Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan Issues Consultation Document (2016). One of the key tests in determining whether a site should be included within the SHLAA is whether the site is accessible.

8. The Council's refusal of permission was ill founded and unjustified. Loggerheads is a designated rural service centre which it has identified as having a wide range of services and being in an accessible location.

9. The Council has accepted in other cases that Saved Policy H1 of the Newcastle-under-Lyme Local Plan (NuLLP) 2003, and Policies SP1 and ASP6 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2009 are out of date and carry less weight, meaning that a decision which is not in accordance with the development plan can be made. If the Council's submission were correct, it would never be possible to grant an award of costs when the proposal is in conflict with the development plan. This approach is not correct.

The submissions for the Council

10. Any costs application must fall fully within one of the tests set out in the Planning Practice Guidance. The proposed development would conflict with the development plan. It is a matter of judgement as to whether other material considerations would outweigh the conflict with the development plan and the Council's approach to this matter was reasonable.

11. The assessment of accessibility is not an empirical or scientific exercise. Members properly came to a different view from officers based on their local knowledge of the area.

12. The Council presented evidence to demonstrate the sustainability and accessibility issues in Loggerheads, having regard to the advice in MfS and the IHT documents. It is necessary to correctly differentiate between policy/guidance and documents such as these which are not incorporated into policy. Table 3.2 of the IHT 'Guidelines for Providing for Journeys on Foot'[2] identifies a preferred maximum of 2 kilometres for commuting as well as school trips. The guidelines in these documents are limited and the Council has had full regard to them insofar as they help assess the merits of the proposal.

[2] 'Guidelines for Providing for Journeys on Foot', Institution of Highways and Transportation (IHT) - CD13.3, table 3.2

13. Whilst the SHLAA documents identify the site as being developable, this was within a 10-13 years range starting in 2022. The text of the 2012/13 SHLAA made no particular finding on accessibility. The assessment of accessibility within the SHLAA process is not comparable to the exercising of planning judgement in the context of a planning application by experienced Members.

14. The Muller site and site at Eccleshall Road are both closer than the appeal site to Loggerheads village centre. It is necessary to recognise the spatial differences between the sites rather than rely on the views of the single officer who drafted the relevant Committee reports. The 'Muller' development would be within 800 metres of the village centre i.e. a comfortable walking distance as referred to in MfS and its approval does not pre-determine that the appeal proposal should be approved. The Eccleshall Road application has not been determined and is in any event only 100 metres from the centre of Loggerheads.

Reasons

15. The Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. It also advises that local planning authorities are at risk of an award of costs if they behave unreasonably in relation to the substance of the matter under appeal. The costs application focusses upon the following examples of such behaviour:

    (a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

    (b) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and

    (c) not determining similar cases in a consistent manner.

16. The proposed development would conflict with Saved Policy H1 of the NuLLP and the strategic direction of Policies SP1 and ASP6 of the CSS. These conflicts are sufficient to mean that the proposal would not accord with the development plan as a whole. Whilst this does not mean that the Council's decision was reasonable, it indicates that it could justifiably withhold permission unless it considered that material considerations indicated otherwise.

17. Although the Council officers recommended approval on several occasions for the appeal proposal, and the highway authority raised no objections, the assessment of a proposal's accessibility by sustainable modes of transport is a matter of judgement.

18. Whilst the 2 kilometre distance referred to in MfS and by the IHT have been referred to by Inspectors in other appeals, the guidance provided in the documents is of an indicative nature which should be taken into account alongside other material considerations. The extract from the Department for Education document which has been provided does not provide definitive guidance for use in planning decisions. No guidance concerning walking distances to services has been set out in national planning policy since the former Planning Policy Guidance 13: Transport was replaced in 2012.

19. The Council has also brought evidence to support its reason for refusal. For example, it has shown that many of the proposed dwellings would be further from facilities in the village centre than the distance of 800 metres referred to in MfS as typically characterising a walkable neighbourhood, and that they would all be further than the distance of 1000 metres from the nearest primary schools which is referred to as 'acceptable' by the IHT[3].

20. I acknowledge that the Council's officer report referred to distances to higher order settlements as being relatively short and to Loggerheads being a sustainable settlement. However, it was able to present evidence to demonstrate that the settlement has some weaknesses in this regard. For example, the Census data, although dated, indicates that the great majority of daily commuting journeys from Loggerheads are over distances which are greater than 10 km and largely by single occupancy car trips[4].

21. The accessibility of the proposed development to jobs and services would have similarities with that available from the proposed housing off Mucklestone Road (the 'Muller' site) and the site off Eccleshall Road[5]. However, the Council has brought evidence to show that the appeal site is further from the village centre and bus stops on the A53 than either of those sites and that although the appeal site is closer to St Marys CE School than either of those sites it is further from Hugo Meynell School.

22. In identifying the appeal site as being suitable for housing development in its SHLAA documents, the Council would have assessed the accessibility of the site. However, the introduction to the 2012/13 SHLAA report[6] states (in bold) that the sites identified within it have only been subject to preliminary assessment. The same document states, on page 13, that the scale of housing on the edge of a village envelope would need to be limited and phased later in the Plan period. In this context, the site falls outside the village envelope and, unlike the two other sites referred to above, could not be reasonably viewed as a 'rounding off' of the edge of the existing built-up area. The capacity of the appeal site identified in the SHLAA (95 dwellings) is also smaller than that within the appeal proposal.

23. I also note that the site was identified in a 'long list of strategic housing sites for potential allocation' in the 2012 Issues and Options Paper[7], again with a capacity of 95 dwellings. However, the list of sites within this document was clearly intended to be subject to further consideration following consultation on its contents. It does not constitute a clear commitment from the Council that the site is suitable for development.

24. Whilst the Council has acknowledged that journeys to some work locations and services outside Loggerheads could be made using the bus services, it has also presented a reasonable case that most occupiers of the proposed dwellings are likely to only make limited use of these services.

25. Although the Council has clearly accepted in other cases that relevant housing policies are out of date and should be given reduced weight, this did not make

[3] 'Guidelines for Providing for Journeys on Foot', Chartered Institute of Highways and Transportation (CIHT) - CD13.3, table 3.2
[4] Mr Lufton's proof appendix 9 and Framework Travel Plan – CD6.7 - table 6.1
[5] subject to planning application 16/00866/DEEM4 at the time of the Inquiry
[6] Newcastle-under-Lyme Borough Council Strategic Housing Land Availability Assessment (SHLAA) 2012/2013 – CD4.4a
[7] Site Allocations and Policies Development Plan Document Issues and Options Paper - CD4.1

it inevitable that it should grant permission in this case, particularly given the approach in the Framework of maximising the use of sustainable transport solutions. This is even taking account of the approach in paragraph 14 of the Framework that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

26. Having regard to all these points, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Jonathan Clarke

INSPECTOR