The Planning Inspectorate

Costs Decision

Site visit made on 27 June 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 30th August 2017

Costs application in relation to Appeal Ref: APP/H0738/W/17/3172499
Land South of Cayton Drive, Thornaby, TS17 0HD

- 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 Mandale Construction North Limited for a full award of costs against Stockton-on-Tees Borough Council.
- The appeal was against the refusal of reserved matters approval (appearance, landscaping, layout, access and scale) for the erection of 45 no. dwellings, access from Cayton Drive and ancillary works pursuant to outline planning consent Ref: 15/1466/OUT.

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The appellant submits that the Council has acted unreasonably by 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; persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable; and making vague, generalised or inaccurate assertions about the proposal's impact.

4. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

5. The Council has published a supplementary planning document (SPD) that is intended to assist developers to understand the requirements of the development plan. It has been demonstrated that the appeal proposal complied with the SPD. The Council state that the SPD is not an adopted policy but is to guide developers, and does not bind the LPA to make a decision based on the guidance within it, as each case is assessed on its own merits. Whilst this may be the case, it is nonetheless incumbent on the Council to clearly set out why in this instance, the requirements of the SPD should be set aside. If a set of minimum standards has been published to assist developers in meeting

policy requirements, it is at least implicit that if a development meets or exceeds these minimum standards, it is likely to be acceptable.

6. Although reference is made to the proximity of the proposed new dwellings to the boundaries of existing properties having an overbearing effect and affecting privacy based on observations made during the Planning Committee site visit, there is very little in the Council's evidence that sets out why this would occur and no explanation of why the relationship would not be acceptable given that it meets the Council's published minimum standards.

7. Similarly, no additional technical evidence was submitted in respect of the overshadowing effect of the existing trees, which would contradict the assessment made by the Council's Landscape Architect.

8. Matters of highway safety fall within the remit of the Highway Authority and it would be expected that had there been concerns in respect of traffic levels and vehicle movements, they would have been addressed in the Highway Authority's comments. Nevertheless, very little other evidence was put forward by the Council to support the reason for refusal and to demonstrate that the proposed scheme would result in highway capacity and safety problems in the locality. Whilst the Council's Planning Committee members visited the site and made their decision based on observations at that time, the statement of case submitted with the appeal is largely a statement of opinion and did not include any technical evidence with regard to matters such as traffic generation or parking surveys to demonstrate an objective analysis of the current and proposed situations was undertaken.

9. In addition on 24 February 2017, before the Council decided the application, the decision in respect of Appeal Reference APP/H0738/W/16/3159756 was issued. Whilst the internal layout of the scheme which was the subject of that appeal differed from the layout in this case, the scheme was identical in terms of the number of houses and the proposed access from Cayton Drive. The Inspector in that case found that the proposal was acceptable in terms of highway safety.

10. There is no evidence that there had been any material change in circumstances between the time of the Inspector's decision and the Council's determination of the application that is the subject of this appeal. By persisting in objections to an element of the scheme that an Inspector had very recently found to be acceptable, the Council has acted unreasonably.

11. It appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the application should have been approved. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Planning Practice Guidance and the appellant has been faced with unnecessary expense in preparing and lodging the appeal.

12. 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

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stockton-on-Tees Borough Council shall pay to Mandale Construction North Limited, 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.

14. The applicant is now invited to submit to Stockton-on-Tees Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Dowsett

INSPECTOR