The Planning Inspectorate

Costs Decision

Inquiry Held on 11-12 December 2018

Site visit made on 12 December 2018

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2019

Costs application in relation to Appeal Ref: APP/R1038/W/18/3206187 Land associated with Hockley House, Hockley Lane, Wingerworth, Chesterfield

- 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 Mr Steve Jones of Stancliffe Homes for a partial award of costs against North East Derbyshire District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for outline application for the construction of up to 35 dwellings with all matters reserved except for access.

Decision

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

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), in reaching my decision.

The submissions for Mr Steve Jones of Stancliffe Homes

3. As part of the ongoing requirement to review cases the Local Planning Authority (LPA) case should have acknowledged that reasons for refusal 1, 2 and 3 (RfRs) could not be supported once the principle of development had to be conceded following the Deerlands Road decision and the biodiversity issue had been addressed to the satisfaction of the LPA's retained ecological consultants.

4. There can be no doubt that both parties appreciated that the Deerlands Road decision would impact on their respective appeal cases. Both parties agreed to delay exchange of evidence in light of the expected date of the appeal decision. It should also be noted that an award of costs was made against the LPA for unreasonable conduct in maintaining its resistance to the appeal. This should have had a chastening effect on the LPA.

5. Once the decision both on the merits and the costs decision were available it was necessary for both to reconsider the merits of their case(s).

6. The LPA had no real alternative but to concede that the principle of development could no longer be resisted.

7. As noted above the RfR2 once it was established that a local site was suitable for accommodating off site mitigation ended any case in respect of this issue.

8. The Appellant contends that the continuation of the case in RfR3 is unreasonable. The basis is set out in the WP letter (26/11/18) a copy of which was sent to the Planning Inspectorate.

9. In short, the case is that the stance the Council adopted was manifestly unreasonable. This is so for these reasons:

    - The proposal is for "up to 35" dwellings. It is not for a specific number of dwellings. It sets a maximum number that could be brought forward in any reserved matters (RM) application. If the appeal was allowed the principle of residential development would be established and the absolute upper limit of the number of dwellings that could be developed.

    - At RM stage the Council would not be precluded from applying appropriate design standards in order to protect amenity and secure good design.

    - It is undoubtedly the case that any dwellings permitted would not have to be delivered as conventional detached/semi-detached houses. A development consisting of elements of terraced or apartment dwellings could be brought forward within the ambit of any approval and within the description of development that could readily achieve the density and probably much greater dwelling density than the "up to 35" actually sought. As noted already in Closing there already is a small component of terraced housing shown on the illustrative plan without any contextual criticism.

    - The illustrative layout that has been submitted to the Council serves to demonstrate that the standards can be achieved on the development site. That is not to say that any developer of the site would bring forward that specific illustrative layout in this case. Any scheme submitted at RM would be the subject of engagement with the professional officers of the Council and, as is the norm, tweaks and amendments to any RM application would occur.

    - The net density proposed in the application is consistent with the density of the residential areas in the vicinity of the appeal site. As set out in Closing at 35 dwellings the gross density is 24 dwellings per hectare (dph) (35/1.46ha) and an average net density of 27 dph (35/1.29ha). The density of the surrounding area and Deerlands Road developments are close to that proposed at the appeal site. The Deerlands Road appeal gross density was 25.5 dph (180/7.05ha).

    - The National Planning Policy Framework (the Framework) places the emphasis on high quality design and placemaking that would be achieved through a RM application. Paragraph 123 of the Framework notes that it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site.

10. The Appellant considered that the position adopted by the LPA could not reasonably be sustained at appeal in circumstances where the Council was having to concede that development of the appeal site was acceptable in

principle. In the event the LPA through Susan Wraith acknowledge that even on their analysis the site can accommodate 28 dwellings.

11. The Appellant warned that if the Council persisted in maintaining RfR3 concerning density there was a need to ensure attendance by Counsel and all appeal costs from the date of the letter would necessarily have to be incurred by the Appellant. This would amount to unreasonable conduct.

12. The Council did not accept the course suggested to them with the result that the Inquiry was the necessary and, indeed, only way for the Appellant to proceed.

13. This amounts to unreasonable conduct and the appellant seeks a partial award of the costs of the appeal amounting to the costs limited to those incurred after the date of the WP letter.

The response by North East Derbyshire District Council

14. This appeal was obliged to take place because of disagreement on the number of houses that can be accommodated (it was established at this point in the Inquiry that on 23 November 2018, with knowledge of the Deerlands Road decision, there was a phone conversation between the main parties, albeit not recorded, with discussion about numbers of dwellings and seeking to secure a compromise – the LPA considering 28 dwellings to be reasonable having regard to the indicative layout for the latest, second, planning application on the site).

15. The LPA disputes that it did not have the stomach to fight the issue of five year housing land supply given the Deerlands Road decision. The Council's response dated 27 November 2018 on RfR3 to the appellant's letter of 26 November 2018 set out the 'battle line'.

16. In the fourth bullet point of paragraph 11 of the costs application, there is reference to 'any developer'. It has always been clear that the developer would be Stancliffe Homes and there was no point in presenting the evidence referred to unless they were bringing forward the development, such that it is not speculative.

17. In terms of the LPA's approach to the Inquiry, it endeavoured to hold discussions with the appellant. The Deerlands Road decision establishes the principle of development. Quantum of development and principle are two separate things. The Council has not sought to dispute the principle of housing on this site. It is an entirely reasonable position to take. It is questioned as to what is the purpose of illustrative plans if not to show what is contemplated and suggested. These plans can be contrasted with the Deerlands Road illustrative plan which is much more sketch like.

18. It is quite clear that it is a highly worked up scheme which the appellant chose to submit with a view to demonstrating how 35 dwellings could be accommodated. That being so, it is not unreasonable for the LPA at the outline stage to consider whether or not a satisfactory scheme is capable of being brought forward.

19. The Council has been reasonable in attempting to discuss 28 dwellings. It delivered clear evidence in support of its case. Simply because a case is not preferred does not make it unreasonable. The Inquiry was focussed down to just one issue. The costs application is wholly without merit.

Reasons

20. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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.

21. The submitted layout plan is illustrative only and so is not for approval. I also acknowledge that despite the level of detail on that plan, it cannot be assumed that the appellant would develop the site, even if that is the desire, as any permission would run with the land. Nevertheless, that illustrative layout was submitted for consideration and the Council, as I have done in my appeal decision, rightly took it into account.

22. There would be scope to amend the layout at the reserved matters stage. However, the presence of that illustrative plan, having been taken into consideration in deciding the outline application, would be a material factor. The Council only had that one layout, and associated number and mix of dwellings, upon which to base its consideration as to whether the proposed development could be accommodated having regard to the character and appearance of the area and the residential amenity of surrounding and prospective residents. It is unlikely that density alone would have been a sufficient indicator in this case.

23. I have found in my appeal decision that there would be sufficient scope and flexibility at the reserved matters stage to ensure that amenity issues could be addressed without compromising the character and appearance of the area. However, my findings nevertheless took account of the submitted illustrative layout drawing, albeit that I concluded differently to the Council as to whether up to 35 dwellings could be accommodated on the site.

24. In conclusion, for the above reasons, I find that the Council did not behave unreasonably in maintaining its objection to the proposal in respect of RfR3 and that, therefore, the applicant's costs in pursuing the appeal were not unnecessarily incurred or wasted. For this reason, neither a full or partial award of costs is justified.

Andrew Dawe

INSPECTOR