The Planning Inspectorate

Costs Decision

Site visit made on 18 June 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Costs application in relation to Appeal Ref: APP/D2510/W/19/3225196
The Royal Views, Hagnaby Road, Old Bolingbroke, Spilsby, Lincolnshire PE23 4HS

- 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 A E Hewison Limited for a full award of costs against East Lindsey District Council.
- The appeal was against the refusal of planning permission for siting of 2no. holiday lodge caravans with associated sheds, decking and car parking and erection of a fence.

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 PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.

3. A full award of costs is sought by the applicant on the basis that the Council has not produced substantive evidence to support its reason for refusal and has referred to a development plan policy that does not relate to the reason for refusal.

4. The Council's decision on the application was taken against the advice and recommendation of its officers. The exercise of judgment is often necessary and local planning authorities are not bound by the advice of its officers. However, the PPG advises at paragraph 049, that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, where there is a failure to provide evidence to substantiate each reason for refusal or where there are vague, generalised or inaccurate assertions about a proposal's impact.

5. The Committee report made Members aware that the Environmental Health team had no evidence to suggest holiday sites created excessive noise for local residents. There is no evidence before me to suggest that at the time of the decision these comments were interpreted by the Planning Committee in any other way than as a specific response to the planning application on the likely impact of the proposal on neighbouring living conditions. In coming to the

view that there would be harm to the living conditions of nearby residents, the Council has not produced any substantive evidence to demonstrate that development of the nature, scale and location proposed would result in such an increase in activity and noise above the existing situation that it would be likely to cause material harm to the living conditions of neighbouring occupiers. On this basis, I am satisfied that the Council's reason for refusal constitutes "generalised and inaccurate assertions about a proposal's impact" as described in the Guidance.

6. A further worrying aspect of the decision is that the reason for refusal identifies conflict with Part 6 of Policy SP10 of the East Lindsey Local Plan Core Strategy (2018) (CS). This element of Policy SP10 relates to a requirement for the design of new buildings to take into account safety and security issues and therefore is not relevant to the specific harm identified by the Council. The Council accepts this is an error, although suggests it was not inappropriate to cite this part of the Policy as concerns about overlooking and loss of privacy were identified by neighbours. Overlooking impact and loss of privacy are not matters referred to in the reason for refusal and therefore the link made by the Council to the inclusion of this part of Policy SP10 is tenuous.

7. I acknowledge that the section of the Council's planning committee report which considers the impact on neighbouring amenity refers to Policy SP10 as a whole and Paragraph 127 of the Framework and that this report was before Members when they made their decision. Nevertheless, appropriate assessment of the proposal against these policies is not evident on the Council's decision notice. The Council has therefore failed to substantiate the reason for refusal with conflict with any relatable parts of the development plan or national policy.

Conclusion

8. 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

9. 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 East Lindsey District Council shall pay to A E Hewison 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.

10. The applicant is now invited to submit to East Lindsey District 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.

M Russell

INSPECTOR