
Costs Decision

Hearing Held on 23 July 2019

Site visit made on 23 July 2019

by V Lucas LLB (Hons) MCD MRTPI

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

Decision date: 15 August 2019

Costs application in relation to Appeal Ref: APP/M0933/W/19/3226074 land adjacent to the north side of Natland Mill Beck Lane, Natland Mill Beck Lane, Kendal, LA9 7XX

- 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 Oakmere Homes (NW) Ltd for a partial award of costs against South Lakeland District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the 'erection of 26 dwellings including vehicular and pedestrian access'.
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Decision

1. The award of costs is refused.

The submissions for Oakmere Homes (NW) Ltd

2. The appellant's claim for a partial award of costs makes reference to Planning Practice Guidance (PPG) and unreasonable conduct in the context of procedural issues. Regarding the issue of housing land supply, that reference to using the standard method by the Council was done so in relation to comparative purposes and that the figure contained within the 2017 SHMA was considered the appropriate basis for the calculation of the 5 year housing land supply. Then one day prior to the exchange of evidence, that the Council advised that they now considered the standard method should be used and it was communicated to the appellant that this was following legal advice. That the Council allowed the appellant to prepare evidence on the assumption that the SHMA figure would be used as this was not clear in the Council's statement of case. It is the appellant's position that the Council's change in approach resulted in the need to produce additional rebuttal evidence and additional time being spent at the hearing.
3. Regarding the landscape issue, that the Council's landscape evidence went beyond the scope of the reasons for refusal and statement of case. Specifically alleging moderate to high adverse impacts, some of which related to the housing itself, visual harm arising from the presence of the housing, harm from houses being on a ridge, the site being part of a 'valued landscape' and conflict with policy LA1.10 regarding the amenity open space. The appellant states that these matters were introduced following the Inspector's Case Management Note but that this related to third party issues and was not an invitation for the Council to expand its reasons for refusal. This has resulted in the appellant having to expend time to address these issues.

The response by South Lakeland District Council

4. The Council's position is that in the particular circumstances of their Council area, national guidance advises the use of a 'locally determined method' as a basis to calculate a five year supply of housing land. Accordingly, within their statement of case the Council utilised two different methods both of which were determined locally to calculate their housing land supply. It is stated national guidance is not clear as to the correct figure to be used where boundaries overlap with National Parks and it was therefore reasonable for the Council to have regard to both the 2017 SHMA and an adjusted version of the standard method. In the exchange of evidence in June the Council referred to both methods being used. The production of rebuttal evidence and attendance at the hearing by the appellant's housing land supply witness was inevitable to deal with the appellant's case and that dealing with housing need formed only a small part of the total evidence submitted.
5. In relation to landscape evidence, the Council notes that the wider impact of the proposal on the character and appearance of the area was an issue raised by third parties and that there was no requirement for the Council to specifically spell out that the appeal site amounted to a 'valued landscape'. It is also stated that the Council's landscape evidence referred to matters that were largely already covered in the appellants landscape evidence. Also that given the reasons for refusal the attendance of the appellant's landscape witness at the Hearing would have been necessary and that in any event only two paragraphs of a five page document deal with this particular element of the reason for refusal.

Reasons

6. The PPG states that irrespective of the outcome of an 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 associated appeal process.
7. In addressing the issue of housing land supply, the Council in their statement of case and proof of evidence referred to using figures from both the 2017 SHMA and the standard method in demonstrating a five year supply of housing land. The appellant was therefore made aware from an early stage that two different approaches would be referred to and would therefore would have been on notice to address these matters in their evidence so as to fully answer the Council's case.
8. As noted in the submissions by the parties, whether an OAN or standard method figure was to be used was a matter for discussion at the hearing and other than stating that a 'locally determined method' should be used the PPG is not prescriptive about the method that should be used except that it should take account of changes in households and local affordability levels. In the absence of specific detailed guidance on the approach to follow where National Parks are concerned, it was reasonable for the Council to refer to two different methods as alternatives. Whilst I note that there appears to have been a change of emphasis in the Council preferring the adjusted standard method, as the appellant had already been made aware that the Council would refer to this then the Council's behaviour was not unreasonable.

9. In relation to the landscape evidence, the Case Management Note clearly identified that the effect of the proposal on the wider character and appearance of the area had been raised by third parties and was an issue relevant to the consideration of the appeal. The Council's evidence simply sought to address this and to respond to specific points raised in the appellant's landscape evidence whilst also dealing with the issue of the wider effect of the proposal on the character and appearance of the area. Reference to the site being a 'valued landscape' merely formed part of this. As noted by both parties this was an issue that third parties had identified in their submissions, including harm from the visual presence of the proposed housing on the site, and it was therefore relevant to the appeal in any event and reasonable for the Council to address this as it had been identified as an issue likely to be discussed at the Hearing.
10. In terms of the Amenity Open Space designation, the effect of the proposal on the openness of the appeal site and visual amenity are both matters that would reasonably be expected to form part of the wider consideration of the character and appearance issue. It was therefore reasonable that the Council gave consideration to this issue. The designation had also been referred to in the officer's report at planning application stage so the appellant had therefore been made aware of it at an early stage in the appeal process.

Conclusion

11. For the reasons given above, I conclude that unreasonable behaviour on the part of the Council has not been demonstrated. It therefore follows that there was no unnecessary or wasted expense. The application for a partial award of costs is therefore refused.

V Lucas

Inspector