
Costs Decision

Inquiry Held on 12 – 13 November & 12 December 2019

Site visit made on 13 December 2019

by S D Castle BSC(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Costs application in relation to Appeal Ref: APP/R1038/19/3233986 Land at, Plot L, Coney Green Business Park, Clay Cross

- 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 Alan Staley (Keepmoat Homes Ltd) for a full award of costs against North East Derbyshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the development of up to 75 residential dwellings (Use Class C3) with access for determination and all other matters reserved for future determination at Plot L, Coney Green Business Park, Clay Cross (as amended).
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Decision

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

Procedural matters and background

2. The cost application was submitted in writing on day 3 (12 December 2019) of the Inquiry.
3. The response by the Council to the costs application was submitted in writing 18 December 2019.
4. The applicant was provided with an opportunity to make any final comments on the Council's response. No additional submissions were received prior to the Inquiry being closed, in writing, on the 20 December 2019.

The submissions for the applicant - Mr Alan Staley (Keepmoat Homes)

5. The applicant contends that the Council failed, in its evidence, to substantiate its reasons for refusal. It should not have refused the application in the first place because it misdirected itself on the meaning of Saved Policy E7 of the North East Derbyshire Local Plan (NEDLP) November 2005, wrongly focussing on the question of employment land supply in Clay Cross to conclude there would not be an adequate supply. This amounts to unreasonable conduct.
6. The Council assessed the adequacy of supply in Clay Cross only and concluded that the supply would be inadequate in Clay Cross if permission were granted.
7. There is no basis in the plan for looking at Clay Cross only. Indeed, doing so is a misunderstanding of the policy.

8. If the Council had asked the right question (i.e. district supply) it would have granted permission. Its failure to do so was a misdirection on the meaning of its own policy. It was unreasonable. As a result of that unreasonable conduct the Appellant has been put to the substantial cost of an appeal.

The response by North East Derbyshire District Council

9. The application for costs is wholly misconceived and should be rejected. The assessment of the adequacy of supply involves both a quantitative and qualitative element.
10. The evidence of Mr Robinson identified the extent of the employment land requirements in his evidence, both district wide and for the period to 2034. The supply to meet that identified need is set out in the emerging draft local plan.
11. Ms Wraith provided evidence regarding the qualitative elements of the assessment.
12. The Council's substantive case to the inquiry has been wholly justified by the evidence that it has presented to the Inquiry. It has not misdirected itself on the meaning of Saved Policy E7 and there is nothing to support the contention that its rejection of the Appellant's proposals is anything other than the reasonable exercise of planning judgement based upon a justified interpretation and application of its own policy.

Reasons

13. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
14. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
15. Saved Policy E7 does not define what is meant by 'adequate' or 'local' in terms of employment land supply. As such, interpretation of this policy and the relevant evidence is a matter of planning judgement.
16. The Council's evidence to the Inquiry included a wide range of information, addressing both qualitative and quantitative elements of employment need and supply.
17. It is clear from Mr Cooper's evidence² that, whilst he considers employment need and supply at a district level important, the Council's refusal was issued based on evidence focused on the land remaining for employment development 'local' to Clay Cross. Whilst the applicant contends that this was unreasonable given the district wide evidence provided by Mr Robinson, I do not find the Council's position inconsistent. There is no standard approach to assessing whether adequate local supply would remain. It is therefore reasonable for a range of information and metrics to form the evidence base of any decision,

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

² Para 7.2 of CD110 Proof of Evidence of Richard Cooper (Employment Land Supply)

but it is for the decision maker to balance the weight given to the various information, metrics and material considerations.

18. Whilst, on balance, I have taken a different view to the Council as to whether an adequate local supply of employment land would remain, I find that the Council's case is substantiated by objective analysis and draws from a reasoned interpretation of its development plan and other relevant considerations. Furthermore, I find that the Council has exercised reasonable planning judgement in its interpretation and application of NEDLP Saved Policy E7.

Conclusion

19. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that an award of costs is not justified in this instance and the application is refused.

S D Castle

INSPECTOR