
Costs Decision

Site visit made on 13 December 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2003

Costs application in relation to Appeal Ref: APP/Y2003/W/19/3230500 Horse Shoe House, 119 Westgate Road, Westgate, Belton DN9 1PY

- 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 Mr A Carruthers for a full award of costs against North Lincolnshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a residential development of land to the south of Westgate Road, Westgate for the erection of up to 23 dwellings.
-

Decision

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

Procedural Matters

2. The hearing was adjourned on 13 December 2019 and then resumed on 19 February 2020. The costs application was heard at the end of the resumed event.
3. The applicant's cost claim was made in writing and was then subsequently amended. The Council's response was made orally, as was the applicant's response. I have had regard to both the written and oral submissions in my decision.

Reasons

4. 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 claim is made on a number of substantive and procedural grounds.

Substantive Grounds

5. It is argued that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant refers to the 'tilted balance' under the National Planning Policy Framework (Framework), stating that whilst the Planning Officer Committee Report acknowledges this as a consequence of the Council's housing land supply (HLS) position, this was not the case with the Committee Members and nor by the Council in its appeal evidence.

6. The minutes of the Committee meeting do not indicate whether or not the members took the 'tilted balance' into account in their decision making, notwithstanding they would have been aware of its application from the Committee Report. The Council's appeal evidence states that the HLS position did not form the basis of refusing the planning application when it was considered by the Committee.
7. However, the applicant has acknowledged that the site is located outside of development limits. The proposal does not form any of the countryside uses set out in Policy CS2 of the North Lincolnshire Council, Core Strategy (2011). Where a Council refuses a planning application because it is contrary to the provisions of the development plan, it is exercising its duty under Section 38(6) of the Planning and Compulsory Purchase Act 2004. It is incumbent to remember that the starting point of decision-making is plan led. As such, reasons that relate to not complying with a development plan are entitled to some weight and so, such a decision is unlikely to meet the test of being unreasonable. This applies in this case.
8. The applicant also considers that the Council failed to produce evidence to substantiate each reason for refusal and made vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
9. The Council's appeal statement essentially is set out to rebut the appellant's evidence. It does so clearly in relation to both reasons for refusal. As regards the accessibility of services, it sets out a case based on the distance to the services and an infrequent bus service on Westgate Road. Whilst the applicant states that data and measurements are not contained in the Council's evidence, they are included in the agreed Statement of Common Ground (SoCG). In evidence at the hearing, the Council also explained why it considered the proposal would not meet its accessibility standards. It is not unreasonable for the Council to follow this approach.
10. Turning to the second reason for refusal, as I have set out in my appeal decision, there are obviously differing views over what land comprises Belton Open Field. I find none of these views inaccurate, but rather relate to different interpretations of the extent of this feature.
11. As regards the contention over the lack of robust evidence from the Council, as well as what is contained in the Council's appeal statement, the Historic Environment Officer (HEO) attended the hearing and responded to my questions with evidence. The HEO also responded to the planning application with a detailed response that was forwarded with the Council questionnaire. The evidence may be different in approach and detail compared to the applicant, but this does not in itself warrant it to be unduly lacking.
12. Overall, the Council's evidence amplifies the matters that are set out in its reasons for refusal satisfactorily, and explains how it considers these concerns arise with an adequate level of detail. The Council has also gone on to respond to specific points that are raised in the applicant's appeal submissions. It has not acted unreasonably in these respects.
13. As regards whether the use of suitable planning conditions would enable the proposed development to go ahead, accessibility to services is not a matter that, in itself, has been argued could be overcome through conditions. In

relation to historic environment matters, there was an obvious difference of opinion between the applicant's consultant and the HEO in terms of whether the related potential mitigation measures would be likely to be effective. This was not without evidence and does not amount to unreasonable behaviour.

14. Concerning whether the Council has determined cases in a consistent manner, as I have set out in my appeal decision, the Sandtoft and other cases that were brought to my attention appear to involve other planning considerations in allowing these other sites, beyond what concerned the appeal site and the proposal before me. The applicant has referred to verbal comments made at the Committee and has listed further sites in the costs claim application but as I am not aware of the particular circumstances, I cannot find the Council's behaviour to be unreasonable in this regard.

Procedural Grounds

15. The applicant considers that the Council changed its position on HLS matters and did not adhere to the related submission timescales. The Council's position is that HLS did not form the basis of refusing the planning application, as well as that some of the evidence was at the bequest of the Inspector.
16. I share some sympathy with the applicant on this matter. The agreed SoCG stated that the Council did not have a 5 year HLS, yet at the hearing on 13 December it was made clear that the Council considered the position to be the contrary. Furthermore, the Council document which considered that there was a 5 year HLS predated the SoCG. Whilst I note the Council's point that HLS did not form part of its case, this has a clear implication under the Framework as regards the decision making process on proposals which concern housing. This constitutes unreasonable behaviour.
17. However, for a costs order to be awarded unnecessary or wasted expense in the appeal process also needs to have been demonstrated. The HLS evidence that the Council submitted would have been required regardless of the apparent inconsistency with the SoCG. The evidence could not be ignored and was needed in order to best inform the appeal decision.
18. As a consequence, the applicant's costs in considering and responding to this evidence would, in all likelihood, have been incurred during the appeal process, even if they were at a different time. If the hearing had not needed to have been adjourned, it is very likely that it would still have carried over onto a second day to discuss HLS, with the associated expense accrued. This does not constitute unnecessary or wasted expense.
19. In relation to the adherence to submission timescales, there was evidence of both main parties not keeping to deadlines that were set. In the interests of fairness, it would not be reasonable to penalise the Council because of this.

Conclusion

20. I find that unreasonable behaviour resulting in unnecessary or wasted expense on substantive and procedural grounds, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR