
Costs Decision

Inquiry Held on 14 - 17 January 2020

Site visit made on 13 January 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2020

Costs application in relation to Appeal Ref: APP/U2370/W/19/3238536 Land off Lambs Road, Thornton-Cleveleys FY5 5JL

- 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 Wainhomes (North West) Ltd for a full award of costs against Wyre Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of up to 66 dwellings and a convenience store (up to 280sqm net sales area) with access applied for off Lambs Road (all other matters reserved).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but 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.
3. The applicant made an application for full costs in writing during the inquiry, referring to paragraph 049 of the PPG as examples of the type of behaviour by local planning authorities that may constitute unreasonable behaviour, as exhibited during this appeal, including:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - acting contrary to, or not following, well-established case law;
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable;
 - not determining similar cases in a consistent manner;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

4. The response by Wyre Borough Council (WBC) was provided orally. In summary, WBC resist the application on the basis that each and every ground is wrong, that no direct causation can be demonstrated and no explanation has been provided of any alleged unreasonable behaviour that has directly caused this appeal.
5. The applicant contends that WBC unreasonably changed its position by only requiring a masterplan some 9 months after submission of the application in October 2017. This change in position also occurred after WBC had confirmed by email, dated 25 July 2018, that the application would be referred to committee with a recommendation of approval, subject to the Lancashire County Council local highways authority (LHA) removing their objection. However, the evidence indicates that the trigger for reconsideration was the publication of WBC's response to the post-hearing advice note from the Inspector examining the submission Wyre Local Plan (WLP). The week following publication of its response, WBC emailed the applicant, dated 9 August 2018, with its updated position on the weight to be given to the emerging WLP.
6. I accept that it is appropriate and proper for WBC to give consideration to an emerging plan, in accordance with paragraph 48 of the National Planning Policy Framework. Whilst the timing and content of the earlier confirmatory email, and in particular its specific reference to the then countryside status and emerging policy, was ill-judged and particularly frustrating for the applicant given the subsequent turn of events, WBC rightly emphasised at the inquiry that this email was not legally binding. Consequently, the time delay of around one week for WBC to advise the applicant of the increased weight that they would be attaching to the emerging plan was not unreasonable.
7. In any case, the application could not have been determined favourably at this point given that highways matters still remained outstanding. Whilst the LHA response of 6 August 2018 removed its earlier objection, I find that the timing of that correspondence was such that it could not fully reflect WBC's latest position with regard to the weight to be attributed to the emerging WLP, notwithstanding the broad reference to the WLP contained therein.
8. Lancashire County Council local education authority (LEA) have not provided any firm commitments in respect of need or location for land for a new school, and this has evidently been a further cause of delay to both the production of the masterplan and the determination of the application, despite attempts of WBC to defend the LEA at the inquiry. However, it is clear to me that WBC have been, and remain, heavily reliant on the support and facilitation of the LEA in resolving this matter, despite the applicant's offer of a land swap. Whilst it was open to WBC to proceed to determination in the absence of commitment from the LEA, the position of WBC to seek to continue a collaborative approach has not been unreasonable. Overall, I find that WBC did not prevent or delay development which should clearly be permitted, given the emerging material consideration of the WLP and ongoing outstanding matters.
9. The interpretation of policy KDC1 was considered at the Stalmine¹ inquiry in March 2019, after adoption of the WLP. The appellant considers that, at this point, the interpretation of KDC1 should have been clear to WBC. However, I find the context and circumstances at Stalmine are different to the appeal proposal, as set out in my decision. Furthermore, it is also the case that WBC,

¹ Appeal decision APP/U2370/W/18/3211691 (Core Document 6.2)

as a local planning authority exercising its duty under Section 38(6), is rightly entitled to consider that the starting point in decision making is plan-led, particularly where that plan is recently adopted.

10. It will be seen from my decision that I did not agree with all of WBC's concerns, nevertheless I have dismissed the appeal for the reasons given. It follows that I find WBC had sufficiently good justification to take the view it did. In refusing the current appeal proposal, WBC gave reasons which are reasonably entitled to be attributed weight in a plan-led decision-making framework, particularly in view of the differences with Stalmine and notwithstanding the same policy wording applying to both. As a consequence, I accept that WBC's reason for refusing the application was not therefore directly contrary to the Inspector and Secretary of State previously considering the Stalmine scheme to be acceptable. Neither was the reason contrary to any established case law presented in evidence, as Stalmine did not proceed to judgement.
11. The WLP makes it clear that the level of detail contained within a masterplan should be proportionate taking into account factors such as scale and complexity of the development, as also indicated by the Stalmine decision. In their evidence, WBC accepted that sufficient information was available to determine the proposal in isolation, subject to conditions and planning obligation, but continued to maintain their position that the development plan nonetheless still required a masterplan. For the reasons given above I have already found that WBC did not act unreasonably in giving weight to a plan-led decision-making approach. It therefore follows that WBC's refusal to grant planning permission subject to conditions and obligation was not unreasonable.
12. Subsequent to Stalmine, WBC updated its masterplanning guidance² to remove paragraph 9.2 which had stated, in summary, that where no masterplan was submitted consideration would be given to whether the proposal prejudices the wider site allocation. The only remaining replacement advice is referral back to the landowner group. That such a change was made by WBC without public consultation, when its own concerns on the draft masterplan are based on lack of public consultation, is surprising. Nonetheless, the varied guidance document is not a statutory document and consequently carries limited weight in interpreting adopted policy, it did not form part of the reason for refusal, and it does not form any critical part of the reasoning in my decision. As such, this matter did not play any significant role in the appeal process.
13. The applicant further suggests that WBC's literalist interpretation of KDC1 is such that WBC effectively hold a veto, particularly where all the information is available to determine the site in isolation and to ensure comprehensive development of the wider site allocation. Whilst that would appear to be the case in generalised terms, in contesting this point, WBC claim they actually relied on two elements; the lack of masterplan and harm, such that no veto existed in this case. I have also already found that WBC are entitled to consider that the starting point in decision making is plan-led, and reasonably so.
14. Whilst it was accepted by WBC during the inquiry that neither the landowner nor the applicant, as owner and option holder for Phase 2 and 3³, are likely to carry out Phase 2 development in a manner that prejudices future interests, this is not a matter that would attract any significant weight in determining an

² Wyre Guidance on the Preparation of Masterplans V1.2 May 2019 (Core Document 5.1)

³ With the exception of a small area to the south of Phase 3 which is under option to a separate party.

application. There has been no evidence to suggest that WBC have failed to determine the appeal in a consistent manner with any other relevant cases, notwithstanding its disagreement with the outcomes of the Stalmine case.

15. Whilst it is the case that the reason for refusal was very broadly worded by WBC, the submission of the Scott Schedule clarified the points of dispute before the start of the inquiry, such that little time was spent on matters no longer in dispute. As such, there was no failure on the part of WBC to produce evidence to substantiate the various aspects of the reason for refusal. Finally, whilst the applicant considers that WBC's case was incoherent and inconsistent, I have already found that it was justified in taking a plan-led approach, such that assertions about a proposal's impact were supported by objective analysis.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Patrick Hanna

INSPECTOR