



Costs Decision

Hearing Held on 25 February 2020

Site visits made on 24 and 25 February 2020

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Costs application in relation to Appeal Ref: APP/Y2003/W/19/3233292 Land at Station Road, Ulceby, Lincolnshire

- 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 P Strawson (MF Strawson Limited) for a full award of costs against North Lincolnshire Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the residential development of up to 90 dwellings, formation of access and provision of public open space.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr P Strawson (MF Strawson Limited)

2. The application for costs was made in writing and expanded on briefly at the hearing and relates to two grounds concerning the substantive issues of the case.
3. Firstly, one of the reasons for refusal on the application that led to the appeal related to the proposed development's highway safety effects. The applicant alleges that the Council failed to substantiate this reason for refusal, and that its assessment of the effects of the proposed development in these regards was vague, generalised or inaccurate and unsupported by any objective analysis. In these terms, the applicant considers that the Council placed undue emphasis on the "anecdotes of local people regarding existing traffic conditions in the event of road diversions"; and contends that these concerns relating to existing road conditions are not a direct consequence of the proposed development.
4. Secondly, at the time of the decision on the application that led to the appeal the Council could not demonstrate a 5 year supply of deliverable housing sites. Consequently, the applicant asserts that the introduction of a revised *Assessment of Five Year Housing Land Supply* (the Supply Assessment) by the Council as an appendix to its appeal statement amounts to an attempt to prevent development that should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations- as the existence or otherwise of a 5 year supply was not referenced in the Council's reasons for refusal. In addition, the applicant considers that the evidence supplied by the Council is defective and inaccurate; and that this led to further unnecessary work on their part at the appeal stage.

The response by North Lincolnshire Council

5. In terms of the first ground, the Council consider that the local knowledge of transport conditions is a material consideration, that it was reasonable to accord weight to in its assessment of the planning merits of the proposal. Moreover, the Council contends that the "significant amount" of additional traffic that would result from the proposed development would exacerbate the existing highway issues.
6. The Council asserts, in respect of the second ground, that its reasons for refusal on the application that led to the appeal are not dependent on the existence or otherwise of a 5 year supply of housing land. Consequently, the Council contends that it did not seek to introduce any new reasons for refusal as a result of the submission of the Supply Assessment. The housing supply position is however, fluid and evolving, and the Council asserts that an up-to-date position is a relevant consideration to the appeal particularly as a former iteration of the Supply Assessment is referred to in the Officer Report on the application. However, the Council did not seek to rely on the Supply Assessment to substantiate its reasons for refusal which are independent of this issue.

Reasons

7. 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. As set out above the applicant makes their case on the basis of two substantive grounds.

Highway Safety

8. The planning application that led to the appeal was supported by a Transport Assessment¹ based on evidence of traffic speeds observed in the vicinity of the site; industry-standard modelling in terms of forecasts of the traffic that it would generate; and up-to-date accident data concerning Station Road in the vicinity of the appeal site. Moreover, the proposed development would incorporate visibility splays designed to address observed traffic speeds. It has also been highlighted that the local highway authority made no objection to the proposed development on the basis of its highway safety or transport impacts.
9. In contrast, the Council has supplied no substantive evidence to refute the findings of the Transport Assessment. I note the Council's statement that traffic in the vicinity of the proposed access "often travels in excess of identified speed limits": which accords with the findings of the applicant's Transport Assessment. However, it is not clear from the statement whether the Council considers the design of the junction to be defective as a result of these observed speeds.
10. I accept that when Station Road is used as a diversionary route for the A180 it could cause an increase in traffic movements, including those of larger vehicles moving to and from the Humber Ports, through the settlement and is understandably a matter of some concern to local residents. However, this situation is not caused by the proposed development. Moreover, the Council's appeal statement makes no reference to either the frequency or the duration of

¹ Produced by ADC Infrastructure, November 2018

such incidents. Consequently, to my mind, it is not clear how the Council's analysis supports a view that the vehicular movements arising as a result of the proposed development would cause an unacceptable impact on highway safety or that its residual cumulative impacts on the road network would be severe². Neither does the Council's evidence support a conclusion that the proposed development would fail to provide a satisfactory access, or that it would not be served adequately by the existing transport network³.

11. Taking these considerations together, I consider that the Council clearly failed to produce evidence to substantiate the reason for refusal; and that it made vague and generalised assertions about the proposal's impact unsupported by objective analysis. I am therefore of the view that the Council acted unreasonably in these regards; and in arriving at this view, I am mindful of the PPG, which advises that such behaviour is unreasonable⁴.

Five Year Supply

12. I readily accept that at the time of the Council's determination of the application a 5 year supply of deliverable housing sites could not be demonstrated. Nevertheless, the siting of the proposed development is in clear conflict with the development plan policies relating to the open countryside, a point conceded by the applicant in their appeal statement⁵.
13. The National Planning Policy Framework makes clear⁶ that in the absence of a 5 year supply of deliverable housing land, that the 'tilted balance' which it sets out in paragraph 11 applies to applications involving the provision of housing. Consequently, the existence or otherwise of a deliverable 5 year supply of housing is clearly of relevance to the proposed development in this case and could affect the weighting that a decision-maker applies to the various material considerations before them - irrespective of the Council's position on the overall planning balance.
14. Moreover, the Council submitted its evidence in these regards in accordance with the timetable, allowing adequate time for the applicant to consider it. Although the applicant considers the Supply Assessment's approach to be flawed this is clearly a matter of differing professional opinions rather than evidence of unreasonable behaviour on the Council's part. Moreover, prior to the hearing a further iteration of the Supply Assessment (dated January 2020) was published, which found only 4 years' supply of deliverable housing land, and the Council made this available as part of the Statement of Common Ground. On this basis, I consider that the Council promptly reviewed its case in the light of the evolving position. Furthermore, it is clear that the housing supply position in the District is dynamic and evolving. Critically, the Council still considered, at the hearing stage, and after the publication of the revised Supply Assessment of January 2020 that the harmful effects of the proposal would significantly and demonstrably outweigh its benefits – which is a matter of planning judgement.
15. Accordingly, taking these matters together, it has not been established that the Council prevented development that should clearly be permitted having regard

² Per the National Planning Policy Framework paragraph 109

³ Per Policy T2 of the North Lincolnshire Local Plan (adopted May 2003)

⁴ Appeals Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

⁵ At paragraph 3.6

⁶ In footnote 7

to its accordance with the development plan, national policy and other material considerations. I conclude therefore that the Council did not act unreasonably in relation to this matter.

Conclusion

16. I have found that the Council did not act unreasonably in respect of its submissions regarding housing land supply. Nevertheless, for the reasons set out above, the behaviour of the Council in respect of the reason for refusal related to highway safety was unreasonable, and clearly led to wasted expense on the part of the applicant in terms of framing their response to that reason for refusal. However, given the other outstanding items of dispute in the appeal, namely the effect of the proposed development on the character and appearance of the site and its surroundings, and the overall planning balance, an appeal would have been necessary in any event. Consequently, whilst a full award of costs is not warranted in this case, I consider that a partial award of costs, limited to the applicant's wasted expense at appeal stage in responding to the highway safety reason for refusal, is justified.
17. Accordingly, for the reasons set out above, and taking into account all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. 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 North Lincolnshire Council shall pay to Mr P Strawson (MF Strawson Limited), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the reason for refusal concerning the highway safety of the proposed development; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to North Lincolnshire 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.

G J Fort

INSPECTOR