



Costs Decision

Site visit made on 9 June 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Costs application in relation to Appeal Ref: APP/L2820/W/20/3246936 Kettering Football Ground, Cowper Street, Kettering NN16 9AW

- 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 Harpur Developments Ltd for a full award of costs against Kettering Borough Council.
 - The appeal was against the refusal of planning permission for development originally described as erection of 48 no. dwellings including associated access and public open space.
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Decision

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

Reasons

2. 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 PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples include failure to produce evidence to substantiate each reason for refusal and it is on this particular basis that the applicant seeks a full award of costs.
3. The applicant provided evidence that the development would not be viable if policy compliant levels of affordable housing were provided. This was independently verified by the Council's appointed assessor. In those circumstances the Council was required to work with the applicant to consider alternative approaches to deliver the desired policy outcomes and to take account of viability in determining the precise proportion and tenure mix of affordable housing in line with Policies 1 (Presumption in Favour of Sustainable Development) and 30 (Housing Mix and Tenure) of the North Northamptonshire Joint Core Strategy 2011 – 2031 (2016) (CS).
4. I have found in my appeal decision that Option 1 in the applicant's Unilateral Undertaking (UU) would meet the financial contributions requested by relevant consultees and that the remaining infrastructure requirements previously listed at section 6 of the Committee Report dated 20 February 2019 could be addressed by condition. The Council contends that the proposed financial contributions were only a fraction of the initial contributions tabled. However, a breakdown of any higher figure or adopted formulas and policies which indicate

financial contributions should be at a higher level has not been provided. It has therefore not been demonstrated that any such higher figure would meet the tests set out at Paragraph 56 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations).

5. In light of the above, I am not persuaded that the Council took appropriate account of the agreed viability position, the appropriate justified level of contributions required to make the development acceptable in planning terms, or the relative level of outcomes that could be achieved in return for the identified reductions in the level of affordable housing. This was in direct conflict with the adopted policies of the CS. The Council's reason for refusal has therefore not been substantiated.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 Kettering Borough Council shall pay to Harpur Developments Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Kettering Borough 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.

M Russell

INSPECTOR