The Planning Inspectorate

Costs Decision

Site visit made on 27 January 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2021

Costs application in relation to Appeal Ref: APP/E2734/W/20/3260624
Land North of Kingsley Farm, Kingsley Road, Harrogate, HG1 4RF

- 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 Richborough Estates for a full award of costs against Harrogate Borough Council.
- The appeal was against the refusal of outline planning permission for residential development, public open space, green infrastructure and associated works; with all matters reserved (149 dwellings indicated).

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The applicant considers that the Council has behaved unreasonably in refusing planning permission for the development and should have granted planning permission having regard to the development plan and other material considerations including the recommendation of planning officers.

4. The Council found that the development was unacceptable due to its location and lack of public transport within a safe and reasonable walking distance to services and facilities. The location of the development is a fixed entity and is something that was clear and obvious, and something the Council would have been well aware of, when the site was allocated for housing development in the Harrogate District Local Plan (2020).

5. The Council, have in effect, sought to prevent the development of an allocated housing site on the grounds of sustainability, driven by the site's location and access to public transport and local services. Such matters, although capable of being matters of planning judgement, are matters that were previously considered as part of the allocation and the formation of relevant planning policies specific to the site, to which the development complies. The planning application process was not the occasion to reconsider these matters of planning judgement and in doing so, the Council has behaved unreasonably.

6. In adopting the Local Plan that provided for the allocation of the appeal site, the Council were fully aware of its location in relation to public transport and local services. Through the adoption of site specific policies requiring, amongst

other things, the provision of pedestrian and cycle links, and a travel plan, the Council, in considering the fundamental requirement of sustainability, were satisfied that the future development of the site would not represent an unsustainable form of development.

7. The appeal scheme does not propose anything different to the form of development as prescribed by the requirements of Policy DM1 of the Local Plan in respect of the location or sustainable travel. It is self-evident that the location of the development is consistent with the policy allocation. Additionally, insufficient evidence was submitted by the Council to suggest that there has been any change to the accessibility to public transport and local services since the Local Plan was adopted only one year ago.

8. The applicant has referred to the introduction of the Council's Community Infrastructure Levy (CIL) in October 2020. The implication of which is that granting planning permission for the development after this date results in it being liable for CIL. The payment of CIL however is not a direct result of the unreasonable behaviour by the Council and it has not resulted in wasted or unnecessary expense. The Council's adoption of the CIL is entirely separate to the planning appeal.

9. The Council refused planning permission taking into account the planning merits of the proposal. The evidence is that the Council refused planning permission based on the policies and considerations that existed at that time. A change of circumstances relating to the payment of CIL does not in itself mean that the Council has acted unreasonably.

Conclusion

10. The Council's reason for refusing planning permission, as set out in its Decision Notice is that the development was unacceptable due to its location and lack of public transport within a safe and reasonable walking distance to services and facilities. I have found that the Council behaved unreasonably in reaching this conclusion.

11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has been demonstrated. A full award of costs, to cover the expense incurred by the applicant in contesting the Council's reason for refusal, is justified.

Costs Order

12. 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 Harrogate Borough Council shall pay to Richborough Estates 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.

13. The applicant is now invited to submit to Harrogate 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.

A M Nilsson

INSPECTOR