



Costs Decision

Site visit made on 22 July 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2021

Costs application in relation to Appeal Ref: APP/Y2003/W/20/3248436 Land East of Scotter Road/South of Scotter Road, Scotter Road, Messingham, North 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 Philip Jackson (on behalf of Jackson Philips Asset Solutions) for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for outline planning consent for 0.75 ha (up to 24 dwellings) residential development with all matters reserved.
-

Decision

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

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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably by failing to acknowledge that it was unable to demonstrate a 5YHLS at the time of the determination of the planning application, which should have negated the need for the first reason for refusal. Furthermore, that the proposal would '*have a significant urbanising effect*' on the village of Messingham, contrary to its open appearance, is contended to have no basis within the development plan to justify this refusal for this reason.
4. I do not have any reason to dispute the chronology provided by the applicant regarding the Council's ability to demonstrate a 5YHLS, which emphasises the marginal position which the Council found itself in this respect during 2019. It is also evident that the determination of the planning application took substantially longer than the 13-week determination period for major planning applications, and during which time the Council's position altered from 5 August 2019 to one whereby it was considered a 5YHLS could be demonstrated.
5. I note that the applicant has referred to another appeal decision from October 2019 where it is contended that the conclusion was drawn that a 5YHLS no longer existed. However, I have not been provided with any details of either

the site or the evidence submitted with this appeal from which the conclusion was taken, although I have no doubt that this decision would have prompted the Council to formally re-calculate their 5YHLS position. In this regard I have noted the timing of the Council's publication of an updated 5YHLS a period of 9 days after the date of the Committee Meeting on 15 January 2020.

6. The timing of the publication of the revised 5YHLS was clearly unfortunate in the context of the determination of the planning application, but inevitably given the often continually evolving position with regards 5YHLS, such a scenario cannot be said to be extraordinary. In this regard, I have noted the applicants' concerns over the length of time taken on the planning application. However, the delays would appear to have been at least in part due to the need to resolve outstanding matters related to archaeology, with the initial objection of 12 April 2019 from the Council's Historic Environment Officer due to the absence of an assessment only removed on 5 December 2019 upon receipt and acceptance of the document. I do acknowledge though that the change of case officer and apparent delay by the Council in responding to queries on matters relating to archaeology, drainage and flood risk would have also in all likelihood played some part in the extended duration of the application.
7. Nevertheless, I do not have any substantive evidence before me to support the contention that the timing of the decision was either suppressed initially until such time as the Council could demonstrate a 5YHLS, or then indeed expedited to the January 2020 Committee in order to reach a determination prior to the announcement of a further change of position. I do accept that it is likely that the Council would have been aware of the conclusions on the further evolved 5YHLS position at the time of the January 2020 Committee Meeting, albeit that I recognise the formal adoption of this position did not occur for a further 9 days. However, even in the event that the Council opted not to communicate the position informally with the applicant, I do not find the failure to provide an advance briefing of a change to be unreasonable given that the circumstances and prompting for such a change clearly pertained to evidence submitted and timescales intrinsically linked to an appeal timescale on another development site.
8. Having regard to the above, I am mindful that even if a conclusion of unreasonable behaviour by the Council on this matter was reached, for reasons addressed below and within the main appeal decision, I have no reason to believe that the Council would not have still sought to refuse planning permission on the basis of the impact on character and appearance. Matters related to infrastructure and the failure to secure affordable housing would also have needed to be addressed and secured, which as I have concluded, they have not been. As a consequence, the same expenses on appeal would therefore have had to be incurred in any event.
9. Turning to the reference to the development having a significant urbanising effect, there seems to be a clear difference in the interpretation of the object of the phrase between the parties. The applicant appears to have understood the reference as being directed at Messingham as a settlement and has calculated the percentage increase in dwellings that the proposal would represent. The Council's evidence has clearly focussed on the impact on the character and appearance of the site, the countryside, and the approach to Messingham.

10. Whilst the turn of phrase utilised in the reason for refusal may have created some confusion given its apparent absence from the development plan, it is quite evident from a fair reading of the Council's Committee Report that the analysis refers to the impact on the site and a reflection on the change of character and appearance of the land that a residential development would have. Although I agree that a general consequence of the residential development of rural land would be that there would be an 'urbanising effect', I disagree that this effectively means that the Council has placed an embargo on all development beyond settlement limits. The Council has clearly expressed the specific planning reasons why the development would be unacceptable in this instance, a stance with which I have agreed.
11. Whilst not incorporated within the application for costs but included in later submissions invited regarding the planning obligations, I have had regard to the applicant's contention that the Council's failure to engage within the course of the application also contributed to the need for the applicant to enter into the planning appeal. However, I am not fully convinced from the evidence that there was a complete absence of engagement during the course of the planning application.
12. Appendix 1 of the applicant's Appeal Statement clearly sets out that the Council provided on 28 June 2019 an indication of the need to either submit a s106 agreement and seek a later deed of variation once full development costs were known, or submit a viability report as this was a matter which could not be secured by condition. I note that ultimately neither option was taken up by the applicant either in full or in draft.
13. Whilst undated, I have also had regard to the clear conclusions of the Council's Spatial Planning team on the 5YHLS position in their consultation response, which along with advice on the specific need for contributions towards education and securing of affordable housing would have been communicated in the response prior to August 2019, in excess of 5 months before the January Committee date.
14. There is no evidence or suggestion before me that consultation responses were unavailable to the applicant during the course of the planning application. Furthermore, beyond an undated copy of text contended as being sent from the applicant to the Council querying the contribution to Riddings Pool, the applicant has submitted no details of any un-responded to correspondence or a chronology of failed contact with the Council supporting the contention of repeatedly requesting clarification or justification for the basis for the obligations during the period prior to the Committee.
15. I therefore find the suggestion that the Council acted unilaterally in presenting a *fait accompli* and without warning in reporting the need for the contributions to the Committee to be without a reasonable foundation. The fact that the applicant did not agree with the need for the obligations does not in itself mean the Council behaved unreasonably in providing an assessment against its own policies and guidance.
16. I do however recognise that the Council's ultimate provision of the justification for the education contributions at a late stage during the course of the appeal, and only further to my own request for the submission, represented a somewhat unreasonable delay in providing this information. However, in light of the continuing objections raised by the applicant and the continued absence

of any means of securing the obligations despite the passage of time, I am not persuaded that provision of this information during the course of the planning application would have negated either the need for, or the costs and expense associated with, the appeal.

17. On the basis of the above conclusions, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Seaton

INSPECTOR