



Costs Decision

Hearing Held on 4 May 2021

Site visit made on 28 April 2021

by **S Hunt BA (Hons) MA MRTPI**

Decision date: 17th May 2021

Costs application in relation to Appeal Ref: APP/R2520/W/20/3254834 Thorpe Grange Farm, Newark Road, Aubourn, Lincoln LN5 9EJ

- 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 Nick Falkinder of LEP Developments Ltd for a full award of costs against North Kesteven District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Erection of industrial/commercial units at Lincoln Enterprise Park (re submission of application 19/0135/OUT).
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Unreasonable behaviour may be either procedural or substantive.
3. The Council's reasons for refusing the proposed development are precise, specific and relevant to the application, and clearly state the conflict with the relevant policies of the Central Lincolnshire Local Plan (CLLP) together with the National Planning Policy Framework (the Framework).
4. The planning history of the existing Lincoln Enterprise Park was the subject of much discussion at the Hearing. Whilst the wording of the planning condition on the previous phase of employment development¹ clearly refers to its purpose of demarking the boundary of the Local Employment Site, the parties agreed that the boundary treatment does not denote any lawful land use. I have taken a different view to the Council and have found that the proposed employment development is acceptable in the proposed location immediately adjacent to an existing Local Employment Site. My decision reflects the significant weight I have given to the relevant parts of Section 6 of the Framework. I have not found the condition discharge application to be central to my conclusions. The Council were entitled to give greater weight to the perceived harm and policy conflict relating to the countryside location of the appeal site.

¹ 17/1857/DISCON – Discharge of condition 5 (boundary treatment) of 16/01625/FUL

5. Evidence has been submitted by the Council in relation to character and appearance at paragraphs 5.37 to 5.48 of the statement of case. Whilst their consideration of landscape and visual effects is not as lengthy and detailed as that of the Applicant, I consider that they have adequately substantiated their reason for refusal in this respect, having regard to the primacy of the development plan. The Council's concerns regarding matters of landscape impact, character and appearance are essentially one of judgement.
6. The Council submitted limited evidence in terms of demonstrating any significant adverse impact on the viability of delivering any allocated employment site². Any detrimental impact on higher tier employment sites is unclear within the Council's evidence. They did, however, submit a greater amount of evidence in rebuttal to the Applicant's evidence in seeking to demonstrate that there are no suitable or suitable sites within allocated sites or within the built up area³.
7. Nonetheless, it will be seen from my decision that I have agreed with the applicants' case on the proposals constituting development of a tier 4 Local Employment Site, and as such it was not necessary for me consider the further tests required for tier 5 'Other Employment Proposals'. The Applicant was required to carry out the work for the appeal in the event that I considered the proposals fell under tier 5. In this respect it was not unnecessary or wasted expense.
8. The Applicant also cites procedural unreasonable behaviour in relation to a lack of dialogue at application stage. However there is limited information before me on this point; there are no copies of correspondence regarding failure to defer the decision nor requests for further information. Consequently I am unable to determine whether the Council's lack of communication with the Applicant has not been justified and, therefore, whether it consists of unreasonable behaviour. However, based on the evidence submitted by both parties as part of the appeal, it seems to me that communication between the Applicant and the Council during that period would not have resulted in a different decision. Consequently, there was no wasted expense in the appeal process as a result.

Conclusion

9. Overall I find that the Council were justified in taking a plan-led approach to decision making approach and they adequately substantiated the reasons for refusal with their assertions about impacts supported by objective analysis. Procedurally, there is no evidence before me to demonstrate that unreasonable behaviour has caused unnecessary or wasted expense.
10. Unreasonable behaviour has not been demonstrated and therefore no award of costs is made.

S Hunt

INSPECTOR

² CLLP Policy LP5 'Other Employment Proposals' tier 5 point v)

³ CLLP Policy LP5 'Other Employment Proposals' tier 5 point i)