The Planning Inspectorate

Costs Decision

Site visit made on 23 February 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th June 2021

Costs application in relation to Appeal Ref: APP/B2002/W/20/3263475 Land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR

- 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 YPG Developments Ltd for a full award of costs against North East Lincolnshire Council.
- The appeal was against the refusal of planning permission for resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works.

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

3. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

4. The applicant considers that the Council acted unreasonably by decided to draw their discussions to an abrupt conclusion on the matter of affordable housing when they had up to that point been working collaboratively to agree a way forward given that there was a significant amount of commonality in the Financial Viability Appraisals (FVAs) prepared by both parties. In addition, they also consider that the Council failed to properly substantiate their reason for refusal.

5. In their response the Council have stated that the recently adopted Local Plan (2018) which has been through a public examination including a viability assessment for its allocations/policies and was considered up to date with respect to the requirement for affordable housing and other contributions to

offset the impact of the development on the area. It also noted that there were no obvious or particular aspects to developing this greenfield site which would suggest the viability would be significantly different from the standard model of development considered in the local plan assessment.

6. They also state that they acted reasonably in allowing an extension of time for the determination of the application and by accepting the appellant's updated FVAs including the related Modero Costings Report. In addition the Council highlight that the appellant was informed at various stages of the application determination process that the proposal could not be supported due to the lack of affordable housing provision and that as a result, they should not have been surprised at the decision or say that it was unexpectedly or abruptly decided.

7. However, having accepted the appellant's updated FVAs and the costings report, the Council appointed their own consultants to review their findings all the while making their basic assumption that the appellant's site-specific infrastructure costs were abnormal costs meaning that in their view they were not valid costs for a traditional housing development on a greenfield site. Therefore, by doing so the Council appear to have not considered the possibility that these were in fact site-specific infrastructure costs which would not necessarily accord with the broad assumptions within the local plan assessment.

8. Furthermore, the Council also had sight of detailed drawings relating to a potential highway improvement/mitigation scheme that the appellant had submitted as part of the application to discharge conditions on the previously approved scheme (Ref DM/0932/19/CND). They also failed to take these into consideration even though the parallel and associated site-specific costs had been outlined in the updated FVAs and the Modero Report submitted as part of the appeal application (DM/0260/20/FUL). Consequently, to my mind, the Council failed to take proper account of these site-specific infrastructure costs which were a product of proposed highway improvement/mitigation works that were a result of negotiations with the Highway Authority.

9. Accordingly, even though the Council's Officer report sets out in some detail their reasons as to why they considered the proposed development to be unacceptable it does not adequately explain the reasons as to why the potential highway improvement scheme contained within the Transport Statement submitted as part the original application and its likely associated costings submitted as part of the updated viability evidence were not taken into consideration.

10. Policy 18 of the adopted North East Lincolnshire Local Plan (NELLP) allows for site-specific viability considerations be taken into account if the applicant provides a FVA in accordance with Policy 6 of the NELLP. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council prevented development which clearly should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.

11. As a result, I find that the refusal of planning permission in this case therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance.

12. I therefore conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

13. 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 East Lincolnshire Council shall pay to YPG Developments Ltd, the full 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.

14. The applicant is now invited to submit to North East 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.

C Coyne

INSPECTOR