



Costs Decision

Site visit made on 14 March 2021

by E Symmons BSc (Hons) MSc MArborA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2021

Costs application in relation to Appeal Ref: APP/H0928/W/20/3260394 Land at White Ox Farm, Inglewood Road, Penrith CA11 8SE

- 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 Richard Thorburn (Riverside/Atkinson Building Contractors Ltd) for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for erection of 100% affordable housing development comprising of 76 residential dwellings.
-

Decision

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

Reasons

2. Irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Within a planning decision there is a requirement for the Council to provide sufficient evidence to fully substantiate its decision. The Applicant submits that the Planning Committee made a decision without good reason, failed to substantiate its reasons for refusal thereby preventing development which should have been permitted.
4. As discussed within the accompanying Appeal Decision, the level at which noise is deemed acceptable, albeit within recommended levels, is a subjective issue. The basis of the Council's reason for refusal was not that numbers exceeded those within the allocation or outline application *per se*, but that due to the density, mitigation measures were inadequate to provide acceptable living conditions.
5. The Environmental Health Officer recommended refusal on this basis and the Planning Committee upheld their concerns. This is not an unreasonable conclusion, albeit a different one from that within my own Appeal Decision which finds a higher noise level and the proposed mitigation acceptable.
6. It is also contended that the Committee were not made aware of the adjacent "Raisland's" development and its proximity to noise sources. As each development, and the specific noise and mitigation factors differ, I have no

evidence to suggest that the Committee decision would have been different, whether or not this development had been discussed. The Council was not unreasonable in its assessment of noise and its reasons for refusal have been substantiated.

7. Policy DEV4 of the Eden Local Plan 2014-2032 (Local Plan) supports provision of developer contributions to increase capacity of local infrastructure, unless evidence shows that a contribution would undermine the scheme's viability. The Appellant provided viability evidence which was assessed by Cumbria County Council (CCC) and it was considered viable with a contribution.
8. Although within my own Appeal Decision I consider that no substantive evidence was provided to support this view, the Council concurred with CCC. The subsequent planning balance and officer recommendation was in favour of affordable housing provision rather than an education contribution. The Committee reached a different planning balance on this issue and this is not unreasonable. The Council's submissions provide sufficient detail to substantiate this decision.
9. Regarding density and quality, the Committee Report, notwithstanding its recommendation to approve the application, does detail potential concerns regarding layout, appearance, open space and the potential impact should further site development occur. The Committee then recommended refusal on these grounds. However, the Council has not fully substantiated this reason for refusal with reference to specific conflict with policy DEV5 of the Local Plan. Although this is unreasonable, it would have been clear from the Officer Report what the pertinent issues were. Furthermore, it has not been demonstrated by the Applicant how this has led to additional expense.
10. The Applicant submits that the Planning Committee did not have the Travel Plan¹ (TP) before them when making its decision. The Committee went on to consider that the appeal scheme would not provide cycle links and would fail to provide sustainable transport options. However, the TP is referred to within the Committee Report's listed documents and there is no evidence to suggest that the Committee were unaware of the report.
11. However, the Council has failed to support this reason for refusal with any objective analysis of the submitted Transport Assessment² and TP. It did not demonstrate that sustainable transport options would be unavailable, were inadequate or explain any severe impacts in terms of road safety and increased traffic congestion as set out in Policy DEV3 of the Local Plan. This resulted in the Applicant undertaking analysis of various factors which could have contributed to this reason for refusal. Therein, additional expense in the appeal process was incurred.
12. Two other issues are raised by the Applicant. Firstly, the Council's statement was due on 25 February 2021, but not received until 10 March 2021. However, the Planning Inspectorate had agreed this extension of time prior to expiration of the required deadline.
13. The second concern relates to an error in paragraphs 4.1 and 7.5 of the Council's statement of case. This cites the number of units in the consented

¹ iTransport Planning. Travel Plan. Proposed 81 Dwellings Residential Development. 15 March 2020.

² iTransport Planning. Transport Assessment. Proposed 81 Dwellings Residential Development. 15 March 2020.

scheme incorrectly. I believe this to be a repeated typographical error as set out within my Decision and the Applicant has failed to demonstrate how this has led to false statements and contentions by the Council. Consequently, this issue does not constitute unreasonable behaviour.

14. The Council evaluated the application and the merits of the scheme, applied its planning judgement, and justified three of its reasons for refusal. There is no conclusive evidence which confirms that Council Members were not fully aware of all of the material planning considerations. In making its decision, the Committee was not bound by the advice of its professional officers and was entitled to exercise planning judgement to reach a different conclusion. Therefore, the appeal could not have been avoided and the Council did not prevent or delay development which should clearly have been permitted.
15. However, clear justification was not provided by the Council to support the reason for refusal relating to a purported lack of sustainable modes of transport. This was unreasonable and led to additional expense for the Applicant in completion of its case regarding this issue alone.
16. In this respect 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 partial award of costs is justified

Costs Order

17. 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 Eden District Council shall pay to Mr Richard Thorburn (Riverside/Atkinson Building Contractors Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the applicant's response to the reason for refusal relating to a lack of sustainable modes of transport; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Eden District 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.

E Symmons

INSPECTOR