
Costs Decision

Hearing Held on 8 September 2021

Site visit made on 9 September 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Costs application in relation to Appeal Ref: APP/G2713/W/20/3258099 Land at Back Lane, Sowerby, Thirsk, YO7 1ST

- 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 Tolent Living (on behalf of Karbon Homes) for a full award of costs against Hambleton District Council.
 - The hearing was in connection with an appeal against the refusal of for planning permission for development of 64no new residential dwellings with associated access, infrastructure, and landscaping.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are expected to meet their own costs. Costs can be awarded where, amongst other things, the following conditions apply: the party against whom a cost award is sought has behaved unreasonably and that unreasonable behaviour has led the party applying for costs to incur wasted or unnecessary expenditure in the appeal process.
3. In summary, it appears that the applicant considers that the Council have behaved unreasonably in that it:
 - should have withdrawn reason for refusal 2 earlier in the process, thereby saving the expense of having to provide a housing witness at the hearing;
 - 80% of the site is allocated in the emerging local plan and therefore planning permission should have been granted;
 - the Council produced no evidence to substantiate the reasons for refusals related to biodiversity and heritage;
 - did not have proper regard to the appeal decision at Saxty Way¹;
 - were slow to respond to the Statement of Common Ground (SoCG) and the need for a s106 agreement.

¹ Appeal Ref: APP/G2713/W/20/3262591

Withdrawal of reason for refusal 2

4. Reason for refusal 2 deals with a number of matters these include:
 - whether the site is appropriate for affordable housing in terms of the policies of the development plan;
 - there is no local needs survey to identify local housing needs to accompany the application;
 - there is no mechanism through a planning obligation made under S106 of the Town and Country Planning Act 1990 to secure the use of the proposed dwellings as affordable housing.
5. In terms of the appropriateness of the site for affordable housing on the edge of Thirsk and Sowerby the development plan does not support housing in these locations. However, Policy CP4 allows for development in other locations (other than within the location set out in the development hierarchy) in '*an exceptional case*' and exception cases can include the provision of affordable housing which meets a local need where that need cannot be met within a settlement. This part of the reason for refusal interacts with reason for refusal 1, which has not been withdrawn.
6. Therefore, and in order to satisfy the requirements of reason for refusal 1. evidence was needed to demonstrate that the appeal proposal would meet a local need for affordable housing. Consequently, housing evidence would need to have been produced by the applicant in order to demonstrate a local housing need, so an exceptional case could be made for the development in terms of Policy CP4.
7. As a result, I find that the late withdrawal of reason for refusal 2 is not unreasonable behaviour that has led the applicant to incur wasted or unnecessary expenditure, as evidence of the local need for affordable housing would have needed to be supplied in any event in order to establish an exceptional case in terms of Policy CP4, together with a means to ensure its implementation.

The emerging Local Plan

8. The emerging Hambleton Local Plan (eLP) allocates part of the appeal site for housing (TIS2). This the applicant argues should have meant that the application should have been granted, thereby removing the need for the appeal and the associated costs. In this respect the applicant has incurred wasted or necessary expenditure due to the Council's actions in not approving the proposal in line with the eLP.
9. The eLP is not an adopted local plan and so therefore is not part of the development plan. Consequently, in any reading of the legislation it cannot be given full weight in this appeal. Moreover, and in the case of the appeal site, whilst it was stated that there are no outstanding objections or modifications, the plan has still to be adopted as a whole. Therefore, and in accordance with the advice on emerging local plans I would give the status of this plan no more than moderate weight in relation to the appeal proposal.

10. Furthermore, the appeal site relates to a larger area than that identified in the eLP and it is not certain that the 20% outside the proposed allocation would be acceptable for development in terms of the policies of the eLP.
11. Reference has also been made to decisions to grant planning permissions or resolutions to grant planning permission which the Council has made recently on sites allocated for development in the eLP around other settlements. However, the Council argued that these sites were for the allocation only and did not include additional land, as in the case of the appeal proposal. The cases are therefore not directly comparable to the case before me as it includes land over and above the allocated site.
12. I therefore find, for the reasons given above, that the failure of the Council to determine the appeal proposal in accordance with the allocation set out in the eLP does not amount to unreasonable behaviour which has led to the applicant incurring wasted or unnecessary expenditure.

Evidence to substantiate reasons for refusals related to ecology and heritage

13. In terms of the evidence presented regarding the ecological impact of the development it was clear to me that the proposal would lead to the loss of trees and a hedgerow. Moreover, a continuous hedgerow along Back Lane was to be severed in several places which meant that its value as a corridor for bats and other species would be reduced. Furthermore, it was not until the appellant submitted an augmented planting scheme as part of the appeal documentation that it was clear that a net gain for biodiversity would result through the implementation of the appeal proposal. However even with this further detail the losses of the trees and hedgerows would still occur.
14. Notwithstanding my conclusions on the appeal, I find that the Council supplied sufficient evidence to substantiate its reason for refusal relating to ecology and biodiversity for the reasons set out above. I therefore do not consider that the applicant incurred wasted or unnecessary expenditure in having to address this reason for refusal.
15. In terms of the heritage evidence presented by the Council it is clear to me that the site is adjacent to the Conservation Area and that 2.5-storey houses, whilst present in Sowerby, were not typical of the type of development along Back Lane. The Council also provided evidence to show that they were concerned about the design impacts of the development on the character of the area in general, including that of the Conservation Area.
16. Therefore, and notwithstanding my conclusions on the appeal, I find that the Council supplied sufficient evidence to substantiate its reason for refusal relating to heritage as set out above. I therefore do not consider that the applicant incurred wasted or unnecessary expenditure in having to address this reason for refusal.

The Saxty Way appeal decision

17. Whilst it is important that appeal decisions are consistent, it is equally important that they are decided on evidence which is relevant to them. Whilst I have had regard to the Saxty Way decision I did not hear any of the evidence that was presented at that hearing. As I have stated above the affordable housing evidence is important to this decision as it assists in establishing whether an exceptional case can be made for the development as required by

Policy CP4. I also note that there is a difference in the main issues between the Saxty Way decision and the proposal before me. Therefore, I find that the Council did not behave unreasonably by continuing to contest the appeal once it had received the Saxty Way decision.

The Council were slow in responding to the SoCG and draft S106 agreement

18. It is clear that the draft SoCG appears to have been in existence for some considerable time prior to the hearing. It is also clear that circumstances changed during the appeal process, in particular due to the issue of the Saxty Lane appeal decision and the progression of the s106 agreement. However, the SoCG was finally agreed and signed on 3 September 2021, 5-days prior to the opening of the hearing. The S106 agreement was in draft until the close of the hearing and I received a properly completed agreement on 10 September 2021.
19. It is clear that the SoCG is not meant to be a statement of agreement, but simply sets out the areas which are agreed between the parties and those that are not. It is meant to be produced by the appellant and agreed by the Council. Its main purpose is to give focus to the discussion at the hearing and to assist in ensuring that the hearing is effectively and efficiently run. Given that the matters which this appeal was to cover have been known for some time I see no reason why the Council could not have completed a SoCG in accordance with the timescales specified in the guidance. I therefore find that the Council acted unreasonably by delaying signing the SoCG until 3 September 2021.
20. However, the hearing proceeded on the basis of the matters which were agreed by the parties in the circulated agenda. I have already set out above the reasons why certain aspects of the evidence needed to be heard. I therefore do not consider that the Council's delay in signing the SoCG led the appellant to incur wasted or unnecessary expenditure in this appeal.
21. With regard to the S106 agreement it is clear that there were good reasons why the Council had not completed the agreement with the appellant prior to the hearing. For example, the signing of the maps and plans within the document. Whilst I accept that this is not strictly legally required, it is Council policy in order to ensure that there is absolute clarity with regard to the coverage of the agreement that the maps and plans are signed by the parties. I also acknowledge that the Council signed the s106 agreement very soon after the close of the hearing.
22. I note the appellants point that the affordable housing is capable of being secured by a negatively worded condition. However, the legal certainty provided by a planning obligation (either a section 106 agreement or a unilateral undertaking) makes it the best means of ensuring that these arrangements are effective.
23. Furthermore, as the planning obligation would have been required in order to secure the use of the dwellings as affordable housing and it was signed quickly after the close of the hearing, I do not consider that any of the alleged delays by the Council in signing the agreement amounted to unreasonable behaviour nor led the applicant to incur wasted or additional expenditure.

Conclusion

24. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expenditure has not been demonstrated by the applicant. For these reasons an award of costs is not justified.

Peter Mark Sturgess

INSPECTOR