

Costs Decision

Site visit made on 31 January 2022

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2022

**Costs application in relation to Appeal Ref: APP/P3420/W/20/3263918
Land to the north of the A51, South of Chorlton Mill Lane and West of the
Railway, Stableford, Newcastle Under Lyme, ST5 5JH, 381332, 339036**

- 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 Skye Property Group Limited for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for 11 Open Market Dwellings (including 9 Self-Build) and 21 Affordable Dwellings (including 13 Self-Build Bungalows and 2 Self-Build Houses). All matters of detail (appearance, landscape, layout, scale and access) are reserved for subsequent approval.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council, during both the application and appeal process.
3. The applicant states that the Council acted has acted unreasonably throughout both the application and appeal process, taking a prejudicial and unreasonable approach to their proposal and offers of mitigation for various issues.
4. On the evidence before me, and in light of the guidance in the PPG, I am satisfied that the Council acted reasonably during the application process. There was no obvious lack of cooperation or delay, nor do I consider that their decision prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council clearly set out the reasons for their decision, the process by which they reached that decision, and clearly explained why this application was determined as it was, taking into account previous decisions, including appeals, in the Borough and the immediate area.
5. I note the criticisms of the conduct of the Committee meeting by the applicant. Notwithstanding any discussion, the decision was taken in line with the recommendation and reasoning of Officers, as set out in their report. My role is to determine if, during the process by which my Decision has been reached,

the Council has behaved unreasonably. Given the content of the Officer report, I do not therefore find unreasonable behaviour in this respect.

6. The lack of a signed, executed planning obligation under section 106 to secure required mitigation is not an unusual reason for refusal. At the time of their decision, the Council was not in possession of a signed, executed planning obligation which would secure those necessary contributions. As addressed in my main Decision, the obligations now appear to have been agreed, and an agreement provided, although not yet signed. The behaviour of the Council in this respect is not therefore unreasonable in the terms of the PPG.
7. The applicant has also alleged that the Council failed in both its statutory duty to work with them in a positive and proactive manner, and its duty under the Framework to work with them in a positive and creative way. Although the application was refused, there is nothing in the evidence before me which suggests that the Council, assessing an application against which it plainly had fundamental objections and considered contrary to the development plan, failed to act in a positive, proactive and creative manner. Indeed, it is clear from the evidence that the Council engaged with the applicant at many stages and provided further information and updated responses.
8. The applicant requested further dialogue at several points in their evidence. That would be more appropriate for pre-application dialogue, or indeed, before any resubmission, in line with advice in the National Planning Policy Framework (the Framework). Whilst I cannot comment on the approach of the Council to amendments to applications prior to decisions, the Procedural Guide: Planning appeals – England is clear that it is not the place or purpose of the appeal process to evolve proposals.
9. In their original Statement of Case, and during the Costs application, the applicant has criticised the wording of the first reason for refusal in particular and the reasoning of the Council around this issue. The link which the Council draws between the reliance on private motor vehicles, the need to access facilities and services, accessibility, the potential for vehicle/pedestrian conflict and the harm which would arise as a result is plain from the evidence. Despite their criticisms, I therefore find that the reason for refusal in the decision notice, and indeed the reasoning of the Council, explained at the time they took their decision, and in their appeal submissions, backed up by the consultation responses, is clear.
10. Turning to the concerns of the applicant around the proposed footway and public right of way improvements, I note the criticisms of the Council by the applicant, and their frustration that they have offered improvements which have not weighed significantly in their favour. However, it is not clear, from the evidence of the applicant, and indeed, the responses by the Council, their consultees and third-parties whether the applicant has the right or ability to deliver these improvements. As such, I do not find that approach of the Council in this respect was unreasonable.
11. I turn now to the response of the Council to the appeal, and the comments of the applicant in their Final Comments to this Costs Application. I do not find that the Council has ignored a significant portion of the evidence provided. In responding to the appeal, the Council has, as have I in my decision, concentrated on the principal important controversial issues which allow parties to understand why the matter was decided as it was. Given the volume of

material presented, and the relatively narrow reasons for refusal (i.e., the principal important controversial issues), I am satisfied that this approach was reasonable.

Conclusion

12. It is clear that both parties in this appeal and application for costs fundamentally disagree over whether the proposal accords with the development plan and the weight to be attributed to the development plan in light of the contents of the Framework. There is also clear disagreement over the exercise of planning judgement in undertaking the tests in the Framework and the final section 38(6) balance in making a decision on the proposal.
13. It is not unreasonable for parties to disagree. It is not unreasonable for parties to draw different conclusions, nor is it unreasonable to disagree on the interpretation of and weight to be given to policies. These are matters of planning judgement. Given that, it was not unreasonable for the Council to refuse the planning application nor was it unreasonable for them to defend the appeal on the same basis, having set out why the matter was decided as it was in the first instance.
14. I find that the Council has not demonstrated behaviour which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense.
15. The application for a full award of costs should therefore be refused.

S Dean

INSPECTOR