The Planning Inspectorate

Costs Decision

Inquiry Held on 19 - 22 April 2022 and 26 April 2022
Site visit made on 25 April 2022

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30th June 2022

Costs application in relation to Appeal Ref: APP/X1118/W/21/3283943
Former Yelland Power Station, Lower Yelland, Yelland, Barnstaple, Devon EX31 3EZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Yelland Quay Limited for a full award of costs against North Devon District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for a hybrid application comprising:

  (A) full application for access and scale of site including raising of ground levels, removal of any contamination, demolition of buildings, flood defence works, site access works and highway infrastructure, together with purpose built bat building and vehicle parking for Tarka Trail.

  (B) outline application for 250 dwellings (Use Class C3(a)), up to 3000sqm employment space (Use Class E(g)(i) and E(g)(ii) was Use Class B1). Retail Space of up to 250sqm gross floorspace (Use Class E(a) was Use Class A1); Space for the Sale of food and drink of up to 2000sqm Gross floorspace (Use Class E(b) was Use Class A3); Service and Community Space of up to 500sqm Gross floorspace (Use Class E(d) E(e), E(f) and F1(a), F1(b), F1(e), and F2(b) was Use Class D1 and D2); layout including all associated infrastructure, roads, footpaths, cycleway, drainage (including attenuation works), landscaping and appearance, public open space and utilities.

Decision

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

Procedural matters

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely appeal process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal. Further, local planning authorities are at risk of an award of costs if they behave unreasonably with relation to:

   - 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;

- failing to produce evidence to substantiate each reason for refusal on appeal;
- making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework), on planning conditions and obligations.

Submissions for Yelland Quay Limited

This section is based largely on the Costs Application by Yelland Quay Limited.[1]

3. The appellant contends that the appeal site is allocated for development of the type and scale set out in the appeal proposal and that there are no material considerations which indicate that planning permission should be refused. Consequently, the refusal is contrary to clear statutory provision (section 38(6) Planning and Compulsory Purchase Act 2004) and national policy (Paragraph 11(c) of the Framework).

4. Furthermore, as it is common ground that the Council cannot demonstrate a 5-year housing land supply (HLS) the "tilted balance" applies under paragraph 11(d) of the Framework which requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal. The appellant contends that the Council were unable to show that this proposal for the type and form allocated in the development plan creates adverse impacts which would significantly and demonstrable outweigh the benefits of the proposal. The refusal of planning permission was contrary to the advice from the Council's officers and is contrary to policy and unreasonable.

5. Consequently, the refusal has resulted in the unnecessary need for the appeal and all of the costs of the appeal have been unreasonably incurred. The appellant has set out the basis for unreasonable behaviour with regard to each of the Council's reasons for the refusal of planning permission.

6. The first reason for refusal contends that "the scheme is not delivering an appropriate housing mix and tenure (affordable housing) to meet local housing needs contrary to policy FRE01(b), ST17 and ST18 of the Local Plan". The parties accept that Policy FRE01 was cited in error and the policy which is relevant is policy FRE02.

7. Policy FRE02(b) identifies that the allocation of the site will be expected to deliver "approximately 250 dwellings the size and tenure of which will be reflective of local needs". There is no mention of housing mix in the policy.

8. Paragraphs 7.12 and 7.13 of the Local Plan advise that housing mix is to be provided on an individual basis having regard to up-to-date and robust evidence which should include development viability. Policy ST17 identifies that development proposals should reflect local housing needs subject to consideration of "development viability".

9. The officer's report identified that the proposed housing mix "is comparable with the HEDNA mix" and had "been tested through the independent viability

[1] ID21

process and found to be acceptable based on the level of abnormals". The Council accept the viability evidence and as such the Council's refusal on this ground is contrary to the provisions of the development plan.

10. Policy FRE02(b) does not require the provision of affordable housing. Policy FRE02 does not refer to affordable housing or provide any requirement which is in contrast to policies relating to a number of other site allocations. Policy ST18 makes a general requirement for 30% affordable housing but provides a variation of this requirement "on the basis of a robust appraisal of development viability".

11. The agreed viability appraisal establishes that the proposal cannot support Section 106 contributions. Although the appellant offered a contribution in excess of £1.4M, the Council did not propose any of this should be put towards the provision of affordable housing.

12. The first reason for refusal is contrary to the evidence, the development plan and the officer's advice. The Council were unable to produce any evidence to substantiate the reason for refusal.

13. The second reason for refusal is concerned with the absence of a contribution towards highway improvements. It was clear during the course of the appeal that the only issue is the impact of the proposal on the capacity of the ESSO Garage/Wrey Arms junction. There are no highway safety concerns.

14. There is no development plan requirement for any mitigation at this junction. If there had been a real issue with this junction it would have been addressed during the preparation of the Local Plan. The relevant test is that in paragraph 111 of the Framework which states that "Development should only be…refused on highway grounds if…the residual cumulative impact on the road network would be severe".

15. It is also clear from paragraphs 110(d) and 57 of the Framework that any requirement for contributions can only relate to any issue created by the development. They cannot be sought to address existing issues. The agreed traffic flow figures show that the appeal proposal would only provide an increase in flow at this junction of 1.7% in the AM peak and 3.5% in the PM peak which is much less than the recorded daily variation in traffic flows at the junction. The projected increase in flow is also an over-calculation as it does not take account of the existing traffic flows associated with the current use of the site which will cease as a result of the proposal. Modelling shows that the proposal will make a very limited impact upon the performance of the junction.

16. The impact of the proposal upon the junction cannot be suggested to be severe and cannot provide a reason for refusal. Refusal on this ground is contrary to both policy and the evidence and is unreasonable. The Council failed to produce any evidence to demonstrate that the impact of the proposal on the junction would be severe. It remains unclear what, if any, highway improvement will be implemented at this junction and what the ultimate cost of such an improvement might be.

17. It was clear that the plan showing a junction proposal was produced simply for the purposes of this appeal in an attempt to provide some justification for the claimed contribution. The Council was unable to explain how the contribution had been calculated in advance of the production of this plan.

18. In addition, the Council was unable to produce evidence to substantiate its position and relied upon vague assertions. As such, it is unable to demonstrate that the level of contribution sought by the highway authority is either policy or CIL compliant.

19. The third reason for refusal alleges that the scheme benefits do not outweigh landscape harm and the adverse visual impact on those using the South West Coast Path and Tarka Trail. The limited nature of this reason is to be noted as the Council appear to have sought to widen the reason in its evidence to the inquiry.

20. The site is a previously developed site and it has been a long-standing planning objective that it should be reclaimed and redeveloped. The redevelopment of the site will remove an area of degraded landscape, characterised by discordant and dilapidated features, large scale materials storage, plant storage silos and derelict buildings, surrounded by a degraded concrete and wire fence.

21. The starting point for consideration of this reason for refusal must be the site's allocation for this type and scale of development and its location which is situated within the "Developed Coast" under policy ST09, which is an area of the estuary with a predominantly developed character. The design of the proposal is the outcome of a careful iterative process informed and guided by the input from the South West Design Review Panel (SWDRP) which is a body of experienced professionals and the Council's own professional officers.

22. The principle of development of this type and scale is set out in the development plan. This will inevitably result in change to the landscape and views. Any development will require land raising of the type proposed and changes to vegetation and ground cover. The principle of development close to the two footpaths has been accepted with the site's allocation. The development of the site will not block views across the estuary and will improve the views of the site from the footpaths.

23. Fundamentally there is no evidence that the proposal creates any landscape or visual impact which is not implicit in the development plan allocation. The refusal on these grounds is contrary to the evidence, the development plan and the officer's advice.

24. The final reason for refusal contends that inadequate infrastructure is being delivered in the form of a football pitch. The proposed development provides on-site open space but does not make provision for a football pitch which is referred to in the policy.

25. The up-to-date evidence does not establish any need for a new pitch in Yelland. Furthermore, a pitch is to be provided on a different site, and the Council accepts that this would meet any need. The viability assessment reveals that the development as proposed cannot sustain any financial contributions. This was undertaken on the basis that the football pitch is not provided. Were such a pitch to be provided this would result in the loss of developable land which would impact still further on the viability of the redevelopment of the site. The refusal on these grounds is contrary to the evidence, the development plan and the officer's advice.

26. Overall, the proposal is in accord with the development plan. In addition, there is a pressing need for the residential development provided by the proposal given the absence of a 5-years supply of housing land. In the circumstances, it is difficult to conceive of a clearer example of unreasonable behaviour. If the Council had behaved reasonably there would have been no need for an appeal and no need for this inquiry. The appellant seeks a full award of costs. Alternatively, if the application for a full award were not granted the appellant seeks a partial award of costs in addressing the different grounds of refusal as set out above.

The response by North Devon District Council

This section is based largely on the response to the appellant's Costs Application by North Devon Council.[2]

27. The Council's position is a perfectly straightforward one. It produced proper reasons for refusal and has supported them with proper evidence. There is no basis for this application for costs.

28. The development is demonstrably contrary to a number of local and national policies. Thus FRE02(d) dealing with buildings and structures seeks to deal with their visual impact on the open landscape setting of the estuary. This approach betrays the fundamental misunderstanding of the appellant. The Local Plan dealt with development here by setting out a number of criteria with which development had to comply. It is the development's failure to comply with those criteria (and other Local Plan and national policies) that has been the Council's focus throughout this appeal.

29. It is accepted that the Council cannot demonstrate a 5-year HLS and the tilted balance applies. The Council has no hesitation in asserting, and has led evidence to that effect, that the harms significantly and demonstrably outweigh the benefits.

30. With regard to the Council's first reason for the refusal of planning permission, size and tenure can include 'mix' and affordable housing. Mr. Harris accepted in cross examination that that 'tenure' could include affordable housing. There is no dispute that viability is a material consideration.

31. Members clearly disagreed with the officers as they were entitled to do. The appellant did not comply with the HEDNA mix for more affordable homes when there is a particular need. There is a need for more affordable and less expensive homes which this development does not provide in sufficient quantity.

32. Policy ST18 deals with viability. The policy allows the Council to reduce or waive the requirement for affordable housing if there was a proper viability assessment (as here) but equally it would allow the Council to say that the absence of affordable housing was a serious failure and therefore a reason for refusal. Even if the Council could have used the Section 106 monies for affordable housing, that would have been at the expense of other obligations. That does not make the development any more acceptable.

33. Turning to the second reason for refusal, the issue with that is simply the level of the contribution in the offer of a partial contribution proposed by the

[2] ID25

appellant. Proper evidence has been supplied on behalf of the highway authority to support the reason for refusal. There is no basis for an award of costs.

34. It is clear the Wrey Arms junction is the one towards which the contribution is sought and this is addressed in some detail in the Local Highway Authority Proof of Evidence (POE) (pages 18 and 19) with a breakdown as to how the contribution has been arrived at. The offer by the appellant of £335,500 has not been assessed on any recognised recent formula but merely considering the residential element of 250 dwellings only, which disregards all permanent vehicle movements associated with commercial activities. It still remains the authority's view that, whilst existing contributions can mitigate improvements at the Cedars junction, the efficiency of this junction continues to be compromised until such time as an improvement is carried out at the Wrey Arms junction.

35. The appellant confirms 3980 commercial vehicles were generated at the site during the whole of March 2021. It is not clear if this is only related to the Concrete Batching Plant which is displaced by the appeal proposal, but unknown as to where it may be relocated to, and whether it includes existing commercial uses which are to remain. Furthermore, the Local Highway Authority's POE (page 14) sets out how 1679 daily commercial vehicle movements and 1091 daily residential vehicle movements, all totalling 2770, may be generated via the appeal site. This includes 250 daily vehicle movements associated with the proposed Retail Use not considered by the highway consultants. It is clear the 3980 vehicle movements, referred to above, gives rise to approximately 131 daily movements.

36. With regard to an improvement scheme at the Wrey Arms junction, discussions have taken place between Members and Officers for some considerable period of time and it was considered necessary to provide a degree of certainty for the type of scheme now formally considered and based on minimum values of similar proposals executed elsewhere within the County. Such improvement was considered by the Highways and Traffic Orders Committee meeting in November 2021.

37. The appellant's highway consultants did not provide a reasonable alternative methodology to calculate the level of contribution but still 'offered' a contribution of £335,500.00 which appears in the Section 106 agreement. Their calculations for this, based only upon peak impacts, disregards the traffic generation from the development and traffic travelling eastwards towards Barnstaple.

38. It is the view of the Local Highway Authority that the contribution sought is necessary to make the development acceptable by reducing capacity issues, at peak times, otherwise exacerbated by the proposed development. The contribution is directly related to the 'ESSO Garage' junction in order to improve its operation and the inter-related junction at 'The Cedars'. In addition, it is directly related to the development as 43% of all development traffic is predicated to utilise 'The Cedars' junction which suffers capacity issues as a consequence of the 'ESSO Garage' junction. Finally, it is fairly and reasonably related in scale and kind as contributions have been assessed taking into account residential and commercial vehicle trip impact on 'The Cedars' and 'ESSO Garage' junctions. Such contribution is potentially one of

four contributory developments, reasonably apportioned, to take into account their predicted impact.

39. Turning to landscape and visual harm, the issue of the AONB was dealt with in the Officer Report only because there was an objection – maintained throughout – by the AONB Partnership. By referring to 'landscape harm' in the third reason for refusal is, in context, certainly enough to encompass the impact on the AONB. The issue was dealt with in the Council's Statement of Case when it was made clear that the impact on the AONB was part of this reason.

40. There is no dispute that the site is Previous Developed Land but it is equally clear that, in principle, a less harmful development could achieve the remediation, reclamation and redevelopment benefits. There is no dispute that the principle of development on this site is acceptable. The issue is simply that the scale, height and typology is unacceptable (see Mr. Radmall's evidence section 7). To reiterate, the site was not allocated for this 'type and scale' of development.

41. While it is true that the layout and design were considered by the SWDRP, it does not mean that the conclusions they arrived at were correct – particularly as they do not appear to have fully considered the impact on a sensitive landscape and the AONB.

42. The appellant asserts that the precise development before this appeal is sanctioned by the Local Plan allocation and that the Council's attempt to show that the development is not policy compliant is a challenge to the allocation. This is simply wrong. The Council has been careful to show that the development is not policy compliant strictly in accordance with the reason for refusal. It has done so by producing proper evidence. Mr Radmall's evidence, on the issue of landscape and visual impact (for example, the height of the buildings when the PEP material shows they could have been low rise and also the urbanising layout), shows exactly why the development plan and national policies are not complied with.

43. The football pitch is required by FRE02(h). Mr Muston explained why the site will generate the need for another pitch. There is no guarantee that an alternative pitch will come forward and the evidence about this, in any event, has only emerged very late in the day. If there is a need for a pitch and it is not provided on site then a contribution would be appropriate. If the contribution cannot be provided because of viability, this is simply evidence of further harm caused by the development and an additional reason why it could properly have been refused.

44. Finally, the Council's evidence is clear in that the scheme does not comply with the development plan. It has provided proper evidence by properly qualified witnesses to support its reasons for refusal. While there is always a need for residential development it is not development of this scale and size and in this place that should be provided - particularly and importantly when it is contrary to a number of development plan and national policies. Neither a full nor a partial award of costs is justified.

Reasons

45. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

46. In considering the appellant's grounds for an award of costs in respect of the Council's first reason for the refusal of planning permission, it is clear that the text of Policy FRE02 of the Local Plan does not provide any reference to housing mix or to affordable housing. However, it does identify that the size and tenure of dwellings should be reflective of local needs. Policy ST17 further identifies that dwelling numbers, type size and tenure should reflect identified local housing needs, subject to the consideration of site character and context and development viability.

47. Policy ST18 of the Local Plan requires that development will be expected to provide on-site delivery of affordable housing equal to 30% of the number of dwellings (gross) on site. However, criterion (5) of the policy provides that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust appraisal of development viability.

48. In the absence of any other verified viability evidence, I have found the independently verified Viability Appraisal to be robust and this was accepted as such during the Council's consideration of the planning application. It is clear from the conclusions of the Viability Report that the proposed development cannot financially support the provision of Section 106 contributions.

49. Given the terms of Policy ST18 (5), I have found that the proposed development without affordable housing remains compliant with the policy as, in this case, such provision is clearly not viable.

50. The HEDNA identified that the provision of market housing over the Local Plan period should be more explicitly focussed on delivering smaller family housing for younger households. Paragraph 8.33 of the HEDNA provides a degree of caution in the prescriptive use of the housing mix figures contained therein. It identifies that "The 'market' is to some degree a better judge of what is the most appropriate profile of homes to deliver at any point in time, and demand can change over time linked to macro-economic factors and local supply".

51. Approximately 66% of the proposed development would comprise of 2-bed and 3-bed properties which I found to be commensurate with the recommendations of the HEDNA to focus delivery on smaller family housing and thereby having consistency with the Spatial Vision of Policy FRE.

52. I accept that there is a need for affordable housing in North Devon. However, the site-specific policy (FRE02) in the development plan does not identify that provision should be made for affordable housing on the appeal site. The Council were entitled to rely on Policy ST17 but the viability evidence available during the determination of the planning application was compelling in that the development cannot financially sustain the provision of affordable housing.

53. Against the viability background, no other technical evidence was provided by the Council to suggest how affordable housing could be provided. Furthermore, it did not seek to allocate any of the £1.4M financial contributions

offered by the appellant to be used as a contribution towards affordable housing. Other than broad assertions, I consider that the Council failed to provide any substantive evidence in the appeal to demonstrate how, in the context of the scheme's viability, there was a material conflict with the development plan policies with regard to affordable housing.

54. Turning to housing mix, it is common ground that the HENDA provides an appropriate basis for the consideration of housing mix. However, this document is clear in that it cautions against the prescriptive use of the housing mix figures contained therein. No evidence was presented to the Inquiry to suggest that the Council were concerned regarding the proposed housing mix during the consideration of the planning application. I have found that the provision of approximately 66% of the proposed development comprising of 2-bed and 3-bed properties would be commensurate with the recommendations of the HEDNA to focus delivery on smaller family housing. This is also consistent with the Spatial Vision of Policy FRE.

55. In the consideration of the first reason for the refusal of planning permission in this appeal, I find that the Council failed to conclusively substantiate any conflict with Policies FRE02(b), ST17 and ST18 of the Local Plan. It was not substantiated by contrary technical viability evidence or objective analysis, particularly as the site was allocated for the quantum of development proposed.

56. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should have reasonably been permitted with regard to the first reason for refusal. The refusal of planning permission based on the Council's first reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the first reason for refusal.

57. Turning now to the second reason for the refusal of planning permission, no conflict with any policies in the development plan were identified. The Local Plan does not identify the need for any mitigation at the Wrey Arms junction. The Council primarily relies on conflict with paragraphs 110 (d) and 111 of the 2021 Framework.

58. The agreed traffic flow figures show that the appeal proposal would only provide an increase in flow at this junction of 1.7% in the AM peak and 3.5% in the PM peak which is much less than the recorded daily variation in traffic flows at the junction. I have found that the modelling shows that the proposal will make a very limited impact upon the performance of the junction.

59. I consider that the impact of the proposal upon the junction cannot be suggested to be severe within the context of paragraph 111 of the Framework. Other than generalised criticism of some of the evidence provided in the submitted Transport Assessments and modelling data, the Council failed to produce any technical evidence to demonstrate that the impact of the proposal on the junction would be severe. Furthermore, no technical evidence was

provided to demonstrate how the impact of development on the Wrey Arms junction would detrimentally impact on the performance of the Cedars Junction.

60. Throughout the Inquiry it remained unclear what, if any, highway improvement will be implemented at the Wrey Arms junction and what the ultimate cost of such an improvement might be. It was clear that the plan showing a junction proposal was produced simply for the purposes of this appeal only and shows 'one option' to provide some degree of improvement. However, this was not supported by any technical evidence of necessity based on anticipated traffic flows. Moreover, it was clear that the Plan had no formal approval of the relevant Committee of the highway authority as constituting the approved scheme which would be desired to be implemented.

61. The financial contribution sought towards this 'un-costed' scheme was based on an historical contribution methodology applied to other schemes recently granted planning permission. However, in this case, I found that there was no justifiable basis, supported by any technical evidence, to justify any contention that the proposed development would result in a severe residual cumulative impact on the road network. In short, I found no basis whatsoever for any improvement to the junction, not least any contribution to an improvement that had no technical justification, no approved design and no costing.

62. Consequently, I found that the financial contribution identified by the Council in the context of the second reason for the refusal of the application would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

63. With regard to the second reason for the refusal of planning permission, I have found that the Council failed to produce any meaningful evidence to substantiate this reason for refusal and the evidence that was provided made vague and generalised assertions regarding the proposal's impact on the junction which were unsupported by any objective analysis. Furthermore, the requested financial contribution towards the alleged junction improvement does not accord with law or relevant national policy.

64. The refusal of planning permission based on the Council's second reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the second reason for refusal.

65. Turning to the third reason for refusal, there is no dispute that the proposal accords with the quantum of development a set out in the development plan. However, the extent to which the proposed form, scale and massing of development causes landscape and visual harm is a matter of subjective judgement. I also accept that to some extent alternative forms of development may cause less of an impact. However, such alternatives are not before me.

66. I found that the scale and form of the development would cause a degree of landscape and visual harm. However, this was not of an extent to suggest material conflict with Policies FRE02(d) or DM08A of the Local Plan as it has to be recognised that any development within the context of Policy FRE02 would

have similar landscape and visually impacts. That is an accepted and inevitable consequence of the site's allocation.

67. Notwithstanding the view of the SWDRP, I consider that the Members of the Council's Planning Committee were quite entitled to exercise their subjective judgement that the form of development proposed, particularly the taller elements, would cause landscape and visual harm. Although I found that the extent of such harm would not cause material conflict with policies in the development plan, that is not to say that the Council's concerns had no basis.

68. However, the Council's third reason for the refusal of planning permission is ambiguous. It can be read as being quite specific in that such harm is limited to the users of the South West Coastal Path and the Tarka Trail only. Alternatively, it could be read that landscape harm applies over a wider basis and the visual harm is limited to these rights of way.

69. Irrespective of the above ambiguity, I consider that the Council were justified to conclude that the form, scale and massing of the development proposed would cause landscape and visual harm and that this view was adequately supported by the evidence presented in the appeal.

70. I accept that the impact on the setting of the AONB was not specifically identified as a reason for the refusal of planning permission. However, by referring to 'landscape harm' in the third reason for refusal, this can reasonably be construed to encompass the impact on the AONB, particularly as the development is within its setting. The issue was dealt with in the Council's Statement of Case when it was made clear that the impact on the AONB was part of this reason.

71. Against the above background, I find that the third reason for the refusal of the planning application was specific, relevant to the application and relevant to the development plan. I have found that the Council had reasonable concerns about the landscape and visual impact of the proposed development to justify its decision. Accordingly, with regard to the Council's third reason for refusal, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.

72. Turning now to the fourth reason for the refusal of planning permission, criterion (h) of Policy FRE02 is quite clear in that development should provide for a new football pitch and associated facilities. However, irrespective of whether the evidence now suggests that there may be no compelling need for the provision of a football pitch, the viability assessment reveals that the development as proposed cannot sustain any financial contributions. This was undertaken on the basis that the football pitch is not provided. I accept that were such a pitch to be provided this would result in the loss of developable land which would impact still further on the viability of the redevelopment of the site.

73. I consider that the Council were fully aware that the proposed development could not sustain a football pitch or associated facilities at the time it made the decision on the planning application. No alternative evidence was provided in the appeal to demonstrate, within the context of the accepted scheme viability, how such pitch could be delivered or how any form of additional financial contribution could be made.

74. Whilst there may have been emerging evidence that questioned the need for a football pitch, the fact remains that at the time the decision was made, the Council were quite aware that such pitch provision could not be made within the constraints of the viability envelope. Therefore, in considering the fourth reason for the refusal of planning permission the Council unreasonably determined conflict with criteria (h) when it was absolutely clear that the development could not deliver such pitch.

75. Although evidence has emerged that questions the need for a pitch, it is clear that some of this information from the Council's own sources was available at the time the Council made its decision and therefore could have assisted in enabling it to come to a more informed view regarding the need for a pitch. In particular there were several reviews of the Northern Devon Playing Pitch Strategy 2017–2031 and Action Plans which did not identify deficiency in football pitch provision in the Fremington and Yelland area. Notwithstanding this, based on the evidence presented in this appeal, any development on this site that seeks to accord with the quantum of development proposed in the Local Plan and achieve the remediation of the site will be financially unable to sustain the provision of a football pitch.

76. In conclusion, I find that the Council did not adequately take the accepted viability evidence into account in reaching its conclusions that there would be a conflict with Policy FRE02(h). Furthermore, it failed to consider this within the context of the development plan as a whole and the internal evidence provided in the Northern Devon Playing Pitch Strategy 2017–2031 and Action Plans regarding the need, or otherwise, for a pitch.

77. With regard to the fourth reason for the refusal of planning permission, I have found that the Council failed to properly consider the available evidence regarding the need and ability of the proposed development to provide a football pitch and associated facilities. Furthermore, no alternative and meaningful evidence was provided in the appeal to support any contention that a pitch can be provided within the constraints of the accepted viability envelope.

78. The refusal of planning permission based on the Council's fourth reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the fourth reason for refusal.

Conclusion

79. I have found that the Council behaved unreasonably in reaching its decision on the first, second and fourth reasons for the refusal of planning permission, but not the third. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the first, second and fourth of the Council's reasons for refusal is justified.

Costs Order

80. 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 Devon District Council shall pay Yelland Quay Limited the costs of the appeal proceedings described in the heading of this decision. This is limited to those costs incurred in contesting the Council's first, second and fourth reasons for the refusal of planning permission.

81. The applicant is now invited to submit to the 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. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR