



Costs Decision

Hearing Held on 23 June 2022

Site visits made on 3 May and 23 June 2022

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Costs application in relation to Appeal Ref: APP/Y2003/W/21/3278257 Land at Brigg Road, Messingham, North Lincolnshire DN17 3QX

- 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 Cyden Homes Ltd for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for a hybrid planning application for 99 dwellings on land at Brigg Road, Messingham (5 full – 94 outline) and associated works. Full application for 5 no. dwellings. Outline application for 94 dwelling on 3.62ha.
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Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant made an application for full costs in writing. At the hearing, the applicant confirmed that they wished to continue with that application. No further claims or additions were made to the application or to the Council's response. The applicant submits that the Council has demonstrated unreasonable behaviour in the following substantive terms, with reference to paragraph 049 of the PPG:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the emerging 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;
 - refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and
 - not determining similar cases in a consistent manner.
4. It will be seen from my appeal decision that I found the proposal to be in conflict with the locational policies of the development plan, as well as finding

harm to the character and appearance of the area, although the harms caused were only of moderate weight. I also found that the Council does not have a five year housing land supply, which triggered the so-called 'tilted balance' of the presumption in favour of sustainable development. On applying this balance, I concluded that the appeal should be allowed. That balance is a matter of planning judgement.

5. The Council was equally entitled to reach its own balanced judgement in refusing the application, even though it was aware of the housing land supply shortage and despite Council officers having recommended approval. So long as the Council could substantiate its reasoning for refusal, to which I turn next, I do not consider the proposed development to be one which should clearly have been permitted.
6. The application was refused for three reasons. The first relates to the location of the appeal site, which is outside the development plan settlement boundary. As a local planning authority exercising its duty under Section 38(6) to determine the application, the Council was entitled to consider that the starting point in decision making is plan-led. Although the Council knew that the most important policies for determining the application were out of date at that time as a result of the housing land supply position, the Council gave reasons which were entitled to some weight. The Council's case was subsequently bolstered through publication of its five year housing land supply position statement, but it is not unreasonable to have introduced and relied on that statement as the latest available evidence.
7. The second reason for refusal relates to the adverse effect of the proposal on the character and appearance of the area. I also found the proposal would give rise to harm in this respect, for the reasons set out in my appeal decision. It follows that I do not find it unreasonable that the Council did too.
8. The third reason for refusal relates to the applicant's failure to demonstrate that the site could be adequately drained. The application was accompanied by a detailed drainage statement and flood risk assessment by consulting engineers. As set out in my appeal decision, these documents provide a strategy for how the proposal would deliver betterment to the existing situation. The Environment Agency noted the site was not at risk of flooding and made no objection to the application. The Council's own lead local flood authority did not object to the scheme subject to conditions. These matters are all noted in the committee report. Indeed, that report clearly states that "no technical evidence has been submitted to demonstrate that the sewage system cannot accept additional flows".
9. The Council's case is founded on the failure of Severn Trent Water (STW) to provide a consultation response and on the representations of local residents. However, the drainage statement contains a pre-application letter from STW confirming that the development could be accommodated in their existing network and that there are no known capacity issues. I have found in my appeal decision that this seriously undermines the Council's case. Even though the letter pre-dates the application, no substantive evidence has been submitted to demonstrate that circumstances have significantly changed. Local residents have raised genuine concerns about the drainage system but, as was evident at the hearing, those concerns predominantly relate to existing issues.

10. The evidence available to the Council on this matter overwhelmingly demonstrates that the proposal makes satisfactory provision for drainage and would not worsen any existing drainage problems. Whilst the Council is entitled to reach its decision contrary to officer recommendation, it must do so reasonably and on the facts before it. Furthermore, any remaining uncertainties on this matter could have been adequately addressed by planning conditions, as expressly provided for in Policy DS14 of the Core Strategy.
11. The applicant cites a number of cases where planning permission has been granted outside settlement boundaries. However, these are for smaller developments, in different settlements, and with some relating to previously developed land. Even though I have allowed the current appeal, on the evidence before me I am not persuaded that these cases are sufficiently similar to the current proposal to represent an unreasonable degree of inconsistency in the Council's decision making. That the Council are purported to have encouraged the applicant to apply for planning permission does not in itself represent unreasonable behaviour, particularly given the subsequent recommendation of approval.
12. Overall, I find that the Council has followed one reason for refusal that it has been unable to substantiate, and this does amount to unreasonable behaviour in respect of that issue. In these circumstances, whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position on that issue, extra costs were nonetheless incurred and an award in these specific respects is justified.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. 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 Lincolnshire Council shall pay to Cyden Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the third reason for refusal which related to the adequacy of the drainage system; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to North 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.

Patrick Hanna

INSPECTOR