



Costs Decision

Site visit made on 30 March 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Costs application in relation to Appeal Ref: APP/A2335/W/21/3285794 Land East Of Forest Heights, Forge Weir View, Halton LA2 6FG

- 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 W Cadman of Wrenman Lancaster Ltd for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal of planning permission for erection of 7 dwellings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. The applicant contends that the Council acted unreasonably in requiring an affordable housing provision on the appeal site through treating it as part of the wider development site approved in 2018 (the 2018 site). The applicant argues the Council did so on the basis of a draft SPD that has since been superseded.
4. Whilst I accept that the proposal is for 7 dwellings which is below the national and local threshold for affordable housing provision, the appeal site nonetheless forms part of the 2018 site. As is argued in my decision, taking into account the location of the proposal, design of the houses and shared infrastructure, the appeal proposal and the 2018 site would be viewed as a single development. In line with the approach in the case law the Council has referred to and which I have referenced in my decision, the Council's decision that the appeal would represent piecemeal development of the wider site was a logical approach to take. I have not been provided with any convincing evidence that they made this decision on the basis of a draft SPD. This SPD is not referred to in the report or decision notice.
5. When taking the above approach, it is appropriate that the viability assessment should assess the site as a whole and I therefore do not consider that the Council acted unreasonably in this regard.
6. The applicant also contends that planning application 20/00277/FUL which was a similar extension to the wider site (and was approved prior to the appeal proposal) was considered in isolation rather than as part of the whole site. No

viability assessment relating to the whole site was required in that instance. I have been provided with the Council's communication with the appellant on this matter. The Council admits that: *'put plainly, it did not occur to the Council at the time of the determination of the earlier extension application, that viability should have been considered across the whole aggregated site'*.

7. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The PPG gives examples of this as: *not determining similar cases in a consistent manner*.
8. I have found that the Council was entitled to take the approach that it did with regard to the appeal proposal in terms of assessing the viability of the whole site. To repeat the approach taken at 20/00277/FUL would be inappropriate for the reasons outlined in my decision. As such, whilst the approach taken in relation to the appeal case is not consistent with the earlier decision, as that earlier approach was not the correct one, unreasonable behaviour in relation to the appeal case has not occurred and an appeal could not have been avoided. On this point I would note that my powers to award costs relate solely to the case at appeal and not in relation to the Council's determination of other applications.
9. Concerns have been expressed by the applicant that the Council did not follow the correct procedure with regard to appointing a consultant to review the appellant's viability case. The applicant states that they were not provided with any alternative quotes to the Council's preferred consultant. I have not been directed to the Council's protocol with regard to such matters and therefore I cannot be certain whether or not this has been followed nor can I be sure whether this amounts to unreasonable behaviour. However, I note from correspondence that the applicant did not query this at the time or request any further quotes.
10. I sympathise with the applicant at the lack of opportunity for discussion of the findings of the Council's consultant, however it is clear to me from the evidence on the file that there was at least some discussion, given that the applicant was given the opportunity to provide a rebuttal. The Council then offered further comments on this.
11. It is understood that the Council intimated that if some affordable housing was provided this would weigh in the application's favour. This is correct as any affordable housing would represent a benefit that would need to be weighed in the balance. However, I agree with the Council that regardless of the extent of discussions, any affordable housing should be supported by viability evidence in accordance with Policy DM3 of the LPP2 and the expectation of Framework paragraph 58. I am therefore satisfied that this did not amount to unreasonable behaviour and without viability evidence I am not of the view that an appeal could have been avoided.
12. On the applicant's final point, it is clear from my decision, that I disagree with the applicant with regard to the 11. d) balance.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul Martinson

INSPECTOR