
Costs Decision

Hearing Held on 13 September 2022

Site visit made on 14 September 2022

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Costs application in relation to Appeal Ref: APP/R1038/W/22/3291220 and APP/R1038/W/21/3287384

Land between Old Canal and North Side of Primrose Lane, Kellammarsh

- 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 W Redmile & sons Ltd for a full award of costs against North East Derbyshire District Council.
 - The hearing was in connection with two linked appeals, each against the refusal of planning permission for 50 dwellings with associated roads, sewers, gardens, parking and garages.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. The Planning Practice Guidance advises 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. Amongst other matters the appellant has argued that the Local Planning Authority failed to have regard to the provisions of its own adopted policies, specifically Policy LC1 of the Local Plan, the greenfield status of the site and a previous planning consent.
4. On the basis of the evidence before me, including the Council's rebuttal to the applicant's costs application, it is my judgement that the wording of Policy LC1 clearly resulted in the expectation of elected members and local residents that the development of the appeal site would be in the region of 30 residential dwellings. However, the Policy is not worded to function as such and could not reasonably be interpreted to place a cap or limit on the number of dwellings to be brought forward on the site.
5. The reference in the Reason for Refusal to the greenfield status of the appeal site while factually correct appears to be at odds with the allocation of the site for development and the earlier planning permission. I note that, the case presented by the Council that the appeal proposal would adversely affect the character of the area appears largely reliant on the somewhat dated Successful Places SPG and specifically for "decreasing density, feathering and providing

looser knit urban grain towards the settlement edge” but is not without some substance.

6. While I have allowed the appeal, I am nonetheless satisfied that the Council did substantiate the reason for refusal of planning permission with regards the character and appearance of the area but did fail to have due regard to the Policies of the Local Plan, specifically the wording and function of Policy LC1 and thereby caused the applicant to incur unnecessary expense in the appeal process in this regard.
7. Turning to the second reason for refusal, in respect of the first appeal, reference is made to the need for an assessment of the capacity of the junction of Primrose Lane and Sheffield Road. I note that such an assessment was willingly supplied by the applicant in respect of the second application.
8. The Council and local residents demonstrated in their evidence at the Hearing that there is clearly on-going highway issues in the local area and while I have allowed the appeal, finding that the effects of the proposed development would not result in an unacceptable impact on highway safety I am satisfied that the Council did substantiate their reasoning.
9. Therefore, it was not unreasonable for the Council to act as they did with regards Highway Safety, even if the County Council did not raise an objection to the proposed development.

Conclusion

10. On the basis of the evidence before me I am satisfied that it has been demonstrated that the Council failed to have due regard to the provisions of its own adopted policies, specifically Policy LC1 of the Local Plan, thereby demonstrating unreasonable behaviour and causing the applicant to incur necessary expense responding to this matter at appeal.

Costs Order

11. 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 East Derbyshire District Council shall pay to W Redmile & sons Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in rebutting Policy LC1 only in the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed
12. The applicant is now invited to submit to North East Derbyshire District 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.

Mr M Brooker

INSPECTOR