



Costs Decision

Site visit made on 18 October 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Costs application in relation to Appeal Ref: APP/C9499/W/22/3295101 Land at Stackhouse Lane, Giggleswick, Settle BD24 0DL

- 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 Carr & Stocks Developments Ltd for a full award of costs against Yorkshire Dales National Park Authority.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 8 No. residential dwellings with associated landscaping and drainage works.
-

Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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. The PPG states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
4. The applicant's concerns relate to the National Park Authority's (the NPA) failure to provide timely feedback on the matters of the site land value in the scheme's viability and the proposed highway access and scheme design. Additionally, the applicant contends that the concerns stated by the NPA for the purpose of the appeal are not adequately substantiated.
5. The NPA's initial conclusion was that the scheme was not viable either with or without a commuted sum and could not therefore meet the requirements of the development plan. In those circumstances it was not an unreasonable approach to question the site value used by the applicant, or to seek expert advice on the specialised matter of the subsequent viability claims.

6. The delays caused by awaiting response from the NPA's advisor on viability extended to some 4 months. During this time the NPA advised the applicant of the delays. However, it is unclear as to when instructions were issued by the NPA or the cause of the delays. Whilst this seems to have unduly extended the time for consideration of the planning application, there is little to demonstrate why that might have occurred, or whether it was within the gift of the NPA to control. In the absence of clear information in that regard, I cannot conclude that it was tantamount to unreasonable behaviour on the part of the NPA.
7. I note the applicant's subsequent criticism of the NPA's reliance on a revised approach to assessment of viability used in the 3 Dragons appraisal. This is a document on which the NPA intends to rely in the development of emerging housing policy. It would replace a viability assessment now considered to be out of date.
8. Although this has not been tested at inquiry, it is clear from the supporting text of Policy C1 of the Yorkshire Dales National Park Local Plan 2015-2030 [2016] that the NPA intends to pro-actively assess the basis of housing delivery in the National Park, including through matters of viability. In the absence of any demonstration as to why this anticipated exercise, or the approach of the Economic Viability Assessment is not valid, I find unreasonable behaviour has not been demonstrated in that regard.
9. Furthermore, bearing in mind the thrust of Policy C1 to provide for local needs housing by way of a commuted sum contribution, and the high abnormal costs attributed to the scheme's development, it was not unreasonable for the NPA to anticipate a limited land value in the particular circumstances of the case. The PPG is clear that abnormal costs should be taken into account when defining benchmark land value¹. The NPAs subsequent reference to values calculated through the economic assessment exercise in addition to that provided by the independent advisor was not, in my view, unreasonable. It merely sought to highlight the NPAs concern in relation to the 'mix' of housing being proposed.
10. In relation to more detailed aspects of the proposal, I recognise that subsequent to taking pre-application advice some adjustments were made to the design of the scheme prior to its submission. Although these are partially set out in the Design and Access Statement, there is only limited evidence of the specific detail of the earlier schemes and the feedback to them. However, in pursuing pre-application engagement and front-loading as advocated in the Framework, the applicant would have a reasonable expectation that if further amendments to the design were required these would be highlighted and detailed by the NPA.
11. I recognise the difficulties that could be caused by amendments to the scheme's design whilst attempting to establish an accurate assessment of viability. Changes to house types, layouts etc. would almost inevitably lead to changes in inputs and outputs in that assessment. It could also give rise to criticism from the applicant in incurring additional costs when the NPA was not satisfied that matters of principle might not be met.
12. Nonetheless, whilst the applicant was able to respond to the advice of the NPAs highway advisor, who's comments or direct engagement must have been available, it seems that the opportunity to seek to resolve design or

¹ Paragraph: 012 Reference ID: 10-012-20180724

landscaping issues was closed off when the NPA sought to defer them to after resolution of the viability issue.

13. I acknowledge the NPAs contention that this approach was not objectionable to the applicant's agent at that time, a matter which is not contested. Nevertheless, the approach is one which would almost inevitably cause undue delay in the decision-making process.
14. Furthermore, although the NPA may not have envisaged the extent of delay that would be caused by seeking further advice on the land value issue, had the opportunity to amend the design been made available when those instructions were issued, it may have drawn the main parties positions closer together or, as a minimum, reduced the matters to be considered in the appeal. The Authority's approach may ultimately have denied the applicant the opportunity to revise the scheme to seek to minimise costs and provide a viable balance against the policy requirements.
15. Although the NPA has subsequently explained its design concerns with regard to the development plan and national policy, I find its reluctance to engage with the applicant during the course of its consideration of the planning application was unreasonable and has then caused the applicant to incur costs in the appeal proceedings.
16. Accordingly, whilst I have subsequently found against the development, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the design effects of the proposed scheme. For this reason, and having regard to all other matters raised, a partial award for costs in defending that aspect of the development in the appeal is therefore justified.

Costs Order

17. 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 the Yorkshire Dales National Park Authority shall pay to Carr & Stocks Developments Ltd the costs of defending the NPAs second resolution that it would have refused planning permission on the basis of its design.
18. 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.

R Hitchcock

INSPECTOR