The Planning Inspectorate

Costs Decision

Hearing held 7 March 2023

Site visit made on 7 March 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/P1560/W/22/3308647
700 and 762 St Johns Road and St Johns Nursery, Clacton On Sea, Essex CO16 8BP

- 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 appeal is made by Kelsworth Limited for a full award of costs against Tendring District Council.
- The appeal was against a refusal of the local planning authority to grant planning permission for demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totalling 1064 square metres with flats above), and roads, open space, drainage, landscaping and other associated infrastructure.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The applicant asserts that the Council acted unreasonably on a number of grounds which I summarise as:

   a) preventing or delaying development which should clearly be permitted;

   b) not reviewing the case promptly following the lodging of an appeal;

   c) making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;

   d) failure to produce evidence to substantiate each reason for refusal on appeal;

   e) not determining similar cases in a consistent manner;

   f) persisting in objections to a scheme which an Inspector has previously indicated to be acceptable; and

   g) refusing planning permission on a planning ground capable of being dealt with by conditions.

Reason for refusal 1

4. As set out in my main Decision, the Council confirmed at the Hearing that its reason for refusal on traffic and highway safety grounds had been addressed by the applicant's submission of further survey data with the appeal. The Council had however completely overlooked this data when preparing its own statement of case, thus triggering a further response from the applicant. Whilst the hearings timetable does not provide the opportunity for such a response, it was nonetheless reasonable in the absence of proper acknowledgement of the grounds of appeal. The Council's failure to properly read the applicant's appeal statement, as too its suggestion that the applicant should have prompted it to do so, both was and is unreasonable.

5. The Council nonetheless maintains that it was correct to refuse planning permission based on the age of the data on which the Transport Assessment (TA) was based. This it claims was out of date. However, the further information submitted with the appeal not only demonstrated that the TA was valid, but robustly so. Insofar as the validity of the TA, the data upon which it was based, and the methodology used had otherwise been clearly explained to Committee members by an officer from the Highways Authority, the provision of this further survey data should not have been necessary. Committee members are not bound by officer recommendations, however this does not mean that expert opinion and evidence can be set aside without good reason. As none has been given, the assertion that the TA was not sufficient to demonstrate the acceptability of the scheme was unreasonable.

6. The fact that as recently as 2020 (the 2020 scheme), a similar, albeit slightly larger development on the same site, utilising the same proposed access, had been found acceptable by an Inspector on traffic and highway safety grounds, should also have been taken as an indication of the acceptability of the proposed development. The Council's failure to take proper account of this previous decision was again unreasonable.

7. I thus find that in relation to the first reason for refusal of planning permission the Council acted unreasonably on Grounds (b), (c), (d) and (f).

Reason for refusal 2

8. As is again set out in my main Decision, the Council did not object to the 2020 scheme on the basis of light, vibration or noise. Consequently, they were not matters considered within the context of the related appeal. Though the Council claims that they remain legitimate areas of concern, it has failed to provide any clear explanation or justification for the apparent change in its approach to assessment. Given the above, these matters cannot have been reasonably anticipated as being grounds for objection by the applicant. The Council's lack of consistency in decision making was indeed unreasonable.

9. At the Hearing the Council provided no evidence or further comment in relation to light and vibration. In relation to vibration the Council's case was therefore wholly unsubstantiated, and its objection thus unreasonable.

10. In relation to light and noise, the likely existence of some impact on the occupants of dwellings either side of the proposed access road would be an obvious consequence of the development. Noise was however a matter that had been previously addressed in evidence in relation to the 2020 scheme, and

officers indicated that impacts in relation to both noise and light could be made acceptable by condition. Further scope for sensitivity in relation to street lighting was outlined by the Highways Authority at the Committee meeting. Again, Committee members were entitled to place greater weight on identified harm than had officers. However, in the absence of any reason why this could not be suitably addressed by proposed conditions, particularly when taking into account the background provided by the 2020 scheme, and the broader acceptability of the location for development, refusal on such grounds was unreasonable.

11. I thus find that in relation to the second reason for refusal of planning permission the Council acted unreasonably on Grounds (c), (d), (e) and (g).

Remaining reasons for refusal

12. Had the Committee not resolved to refuse planning permission for reasons 1 and 2, the applicant would have been invited to provide a Section 106 agreement (S106) prior to planning permission being granted. The Committee Report also states that a dormouse survey could be obtained at this point, albeit this was omitted from the recommendation. The addition of reasons for refusal based on the lack of a S106 and dormouse survey therefore simply followed on from identification of reasons for refusal 1 and 2. In this regard I have been given no reason to believe that these matters would not have been addressed prior to the Council granting planning permission had this been the Council's resolution. They have instead been addressed at appeal.

Summary

13. My findings above indicate that the Council's first and second reasons for refusal were unreasonable, and that following the Council's normal procedures, its remaining reasons for refusal could all have been addressed prior to a grant of planning permission. That being so, and with further reference to Ground (a), the Council's refusal of planning permission was itself unreasonable.

Conclusion

14. For the reasons set out above I conclude that unreasonable behaviour resulting in wasted expense as described in the PPG has been demonstrated, and that a full award of costs is justified.

Costs Order

15. 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 Tendring District Council shall pay to Kelsworth Limited the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. Kelsworth Limited is now invited to submit to Tendring 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.

Benjamin Webb

INSPECTOR