



Costs Decision

Site visit made on 25 April 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

**Costs application in relation to Appeal Ref: APP/D2510/W/22/3306142
Land off Low Road, Friskney PE22 8NJ**

Easting (x) 546306 Northing (y) 355932

- 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 Lusso Homes for a full award of costs against East Lindsey District Council.
 - The appeal was against a refusal to grant planning permission for 'Siting of 23 single storey modular homes for over 55s'.
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Decision

1. The application for an award of costs is refused.

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 PPG provides 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 planning applications, or by unreasonably defending appeals. Examples of this include 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, where a local planning authority fails to produce evidence to substantiate each reason for refusal on appeal, where vague, generalised or inaccurate assertions are made about a proposal's impact, which are unsupported by any objective analysis or where similar cases are not determined in a consistent manner.
4. The appellant suggests that they demonstrated during the planning process that a reduced level of contribution was justified. However, it is entirely usual for a Local Planning Authority to seek to negotiate the level of any reduced figure where the evidence suggests a full contribution would be unviable. From my own observations, there are discrepancies within the viability evidence put forward. Therefore, the Council's concerns that an appropriate level of contributions would not be secured were not unfounded.
5. Furthermore, it is not for me to determine whether a court of law would find that the Council should have accepted the level of developer contribution put forward by the appellant during the planning application process having regard to the appointed arbiter's review on viability and the potential impacts of reduced contributions on local infrastructure.

6. In terms of the allegation that the Council failed to properly correspond and refused to meet with the appellant during the planning process, I have seen that the Council responded on such matters as part of its formal complaints process. It is common practice for the Council to communicate through an appointed agent which was the case in this instance. From the evidence before me, while there may have been some delays the Council did have regular correspondence with that agent and it was open to the appellant to appeal against non-determination if they considered that the application was being unreasonably delayed. There is no objective evidence to suggest that a direct meeting with the appellant would have avoided an appeal given the clear opposing positions of the main parties.
7. As set out in my appeal decision, the material considerations that may have been determinative on other sites where nil affordable housing contribution was sought are not automatically applicable to the appeal site. The Council was entitled to come to a view based on the site-specific considerations before it given the clear expectations in the development plan for affordable housing contributions to be made.
8. For the reasons set out, I therefore find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

M Russell

INSPECTOR