



Costs Decision

Hearing held on 16 August 2023

Site visits made on 15 and 17 August 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Costs application in relation to Appeal Ref: APP/B2002/W/22/3311282 Land to the west of 30 and 31 Torbay Drive, North East Lincolnshire, Grimsby DN33 3DQ

- 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 Snape Properties Ltd for a full award of costs against North East Lincolnshire Council.
 - The appeal was against the refusal of planning permission for construction of 64 dwellings consisting of bungalows, houses, detached garages, access roads, drives including landscape works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 sets out the examples of unreasonable behaviour by local planning authorities which includes 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; failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant contends that the Council have not provided evidence to substantiate their five-year housing land supply position; have prevented development which should clearly be permitted and made vague and generalised analysis particularly in respect of highway impact.
5. I note at the point of determination of the application the Council could not demonstrate a 5-year supply of deliverable housing sites. As the North East Lincolnshire Local Plan is now more than 5 years old the standard method to calculate housing land need has been applied to determine the Council's 5-year housing land supply (5YHLS) position. Based on this approach the Council state that they can demonstrate a supply of 13.1 years.
6. Limited written evidence was provided during the appeal process to substantiate the Council's position, however, at the hearing, I was directed to an update to the Strategic Housing Land Availability Assessment.

7. As such, whilst limited information was provided there is nothing before me to dispute the published 5YHLS figure. I concur with the Council that it was proper to publish the most up to date housing supply position and in my view their actions in this regard do not amount to unreasonable behaviour.
8. I have not sided with the Council and in my judgement having regard to the provisions of the development plan, national planning policy and material considerations, the development should reasonably have been permitted. However, and whilst noting the recommendation of officers, the decision is one which is a matter of planning judgement. Whilst Council Members have taken a different view from that of their officers, they are not duty bound to follow the advice of their officers, provided that there are sufficient planning grounds to come to a contrary view.
9. In this regard, the Council's case fell short of substantiating its claim that the development would result in a severe impact on highway safety or on the operation of the highway network so as to result in conflict with the development plan or national policy.
10. At the hearing the Council acknowledged that there were no technical objections to the highways evidence submitted by the applicant. The concerns advanced in relation to existing road conditions and the likely impact are largely anecdotal and the Council has not substantiated the reason for refusal in respect of this matter with any clear evidence.
11. As such, the refusal of planning permission on highway impact grounds, in the absence of any justifiable evidence and by advancing vague and generalised assertions about the proposal's impact amounted to unreasonable behaviour and resulted in the applicant incurring unnecessary expense.
12. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the second reason for refusal and a partial award of costs is therefore warranted.

Costs Order

13. 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 Lincolnshire Council shall pay to Snape Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to North East Lincolnshire 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.

B Thandi

INSPECTOR