



Costs Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal Ref: APP/A2335/W/23/3321406 Land at Scotforth Road, Scotforth, Lancaster LA1 4NU

- 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 Northstone Developments Ltd for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal of planning permission for approval of details pursuant to condition No 1 of outline planning permission, ref 22/00423/VCN, granted on 17 August 2022.
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Decision

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

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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicant argues that the Council has acted unreasonably by advancing a series of assertions that are vague, generalised, and occasionally factually inaccurate. The applicant considers that there is an absence of objective analysis to support those assertions or to establish harm or a policy breach and this amounts to a failure to substantiate the reason for refusal. The applicant claims that this approach has delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy, and other material considerations.
4. Following the close of the hearing, the Council approved an alternative reserved matter application for the site (REM2). The applicant considers that there are inconsistencies in the way that the Council has dealt with REM2 and the appeal proposal. This concerns the application of Policy SG1 of the SPLA DPD¹, the use of planning conditions, and the flexible application of policies and guidance in the development plan.
5. The Council disputes that it has acted unreasonably.

¹ 2020 adopted Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD

Lack of Objective Analysis

6. As I have dismissed the appeal, it is not the case that the Council delayed development that should clearly have been permitted. In their evidence, the main parties have differed on the degree of consistency of the appeal proposal with policies in the development plan. This is in terms of whether the proposal would achieve the positive design that is expected of all new development; and the high bar for urban design and contribution to the definition of a sense of place, high standard of sustainability and attractiveness, and sense of community expected for development in the Lancaster South Broad Location for Growth as defined in Policy SG1 of the SPLA DPD.
7. The Council's reason for refusal is essentially a matter of planning judgement. The Council's evidence in its officer report and statement of case sets out the planning balance and adequately explains why it considers that the proposal would not be acceptable. I appreciate that reference could have been made to documents such as the National Design Guide to help articulate the concerns. However, this does not mean that the opposition to the proposal has not been properly justified. To my mind, the Council's written evidence and the arguments made at the hearing were neither vague nor generalised, but conveyed the reasons why the proposal could not be supported. The Council's case has been adequately reasoned, and this is framed within the context of the development plan.
8. I have found that the Council had reasonable concerns about the proposal which justified its decision, and these are based on a conflict with the development plan and the National Planning Policy Framework. In these respects, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Inconsistent Approach

9. Although the officer report for REM2 does not explicitly refer to the Key Growth Principles set out in Policy SG1, it is clear that the policy formed the basis of the assessment. This can be seen from the appraisal, including the three questions posed in the officer report under 'design and form', which draw on the Policy SG1 criteria that were mainly at issue with the appeal proposal. These three questions are the same as three of the headings in the officer report for the appeal proposal. The Council's statement of case for the appeal proposal identifies the criteria in Policy SG1 that it considers are relevant to the reserved matter application and those that are not. Although there is some variation in the structure of the officer report for the appeal proposal and REM2, I do not consider that the application of Policy SG1 has been materially different between the two.
10. As can be seen from my decision, I am satisfied that the landscaping details submitted appropriately demonstrate that the areas of open space and landscaping would be of sufficient quality to meet the aspirations of Policy SG1, and further details could be secured through the imposition of a planning condition. The applicant states that the landscaping details submitted for the appeal proposal and REM2 are the same. However, the Council has taken a different position on landscaping between the two schemes. The Council's position for the appeal proposal is that there is a lack of detail to ensure that the landscaping would adhere to the aspirations in Policy SG1. However, for

REM2, the Council concludes that there is sufficient confidence that a high-quality landscaping scheme can be secured by planning condition.

11. The Council's position on this matter is that there are key differences between the appeal proposal and REM2 that places greater confidence that a landscaping scheme could come forward under a planning condition that contributes towards a sense of place. Examples given of changes that contribute towards developing a greater sense of place are the change of location of the communal garden, the introduction of street communal gardens and a change to street layout.
12. Based on the limited information that is before me, I cannot reasonably conclude that the Council has acted inconsistently between the two schemes with regard to the landscaping details.
13. The Council's statement of case acknowledges that the guidance on housing mix is not rigid and a flexible, site-specific approach should be taken. There are notable differences between REM2 and the appeal scheme in terms of housing mix and distribution. In addition, the layout of the dwellings within REM2 do not appear to have the same extent of shortfall of separation distances. The Council was open to reach a different conclusion on the consistency with the relevant policies and the weight to attach to the matter of housing mix and affordable housing and privacy distances in the planning balance given that there were changes between the two schemes.
14. The applicant considers that the Council has been inconsistent in its decision making between the appeal proposal and REM2. However, I am not persuaded that this is the case given the content of the appraisal set out in the two officer reports and the Council's appeal statement, and the differences between the two schemes. In this regard therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Conclusion

15. For the above reasons, I find that the Council has not behaved unreasonably in terms of the issues relating to a lack of objective analysis and an inconsistent approach.

F Wilkinson

INSPECTOR