



Costs Decision

Hearing held on 5 March 2024

Site visit made on 4 March 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Costs application in relation to Appeal Ref: APP/G2435/W/23/3332607 Land Adjacent to - Grange Road, Hugglescote, Coalville, Leicestershire LE67 2BT

- 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 Cadeby Homes Ltd for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of planning permission for the erection of 80 dwellings including temporary construction access, parking, pedestrian links and open space to parcel E (reserved matters of access, appearance, landscaping, layout and scale to outline planning permission ref. 13/00956/OUTM).
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Decision

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

The submissions for Cadeby Homes Ltd

2. The costs application by the Appellant was submitted in writing at the hearing. In summary, the Appellant asserts that the Council has behaved unreasonably both procedurally and substantively as:
 - The proposal follows the outline approval of the site as part of a Sustainable Urban Extension (SUE) to Coalville. The outline application was supported by a range of technical documents including details of the means of access through the site for pedestrians and cyclists. The Vehicle Access Strategy, approved by virtue of condition 27 of the outline approval, reflected the site wide access strategy which demonstrated that safe, convenient, and attractive routes to goods and services would be provided. In accepting the strategic documents and approving relevant conditions the Council accepted that the site would be sustainable and to refuse the proposal on these terms is contrary to the agreed principles.
 - The Council have failed to provide objective or technical evidence to substantiate the reason for refusal.
 - The proposal gained no objection from the Highway Authority or planning officers on the grounds of highway or pedestrian safety or the site's inaccessibility for goods and services.
 - The planning application was reported to Planning Committee on 16 August 2023 with a recommendation to approve but was deferred for a Road Safety Audit (RSA) and for the Highway Authority to revisit whether a Puffin crossing was needed. When the item was reported back to Planning

Committee (12 September), despite the Highway Authority reporting that a RSA was not required and the Appellant's offered a vehicle activated speed sign, the committee refused the scheme. This decision was taken without substantive evidence and the Council has therefore acted unreasonably and has caused unnecessary delay and cost to a local housebuilder.

The response by North West Leicestershire District Council

3. The response by the Council was made orally at the hearing. The Council replied with the following comments:
 - The Council accepts that the wider highway impacts of the development have already been considered through the outline approval process. However, matters that affect movement within the site are open for further discussion. There is a direct relationship between the proposals need to use the junction (via phase 1) onto the junction of Grange Road and the ability for people to safely cross the road.
 - Detailed technical evidence has been submitted in support of the Council's case.
 - Planning Committee is entitled to disagree with officers and are under no obligation to follow advice. The decision to refuse has been supported by the evidence from Waterman. The deferral of the proposal by the Committee in August and its reconsideration and refusal in September does not amount to unreasonable behaviour. This instead demonstrates a clear effort to find a sound solution to the concerns raise by Members as it is good practice to seek to explore positive outcomes.

Reasons

4. 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. The PPG explains that the aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.

The effect of the outline approval

5. The outline approval established a broad range of strategic matters. This included an approach to road hierarchy, bus routes, cycle and pedestrian linkages through the SUE and interconnections with the wider area. This strategic approach was supported by more detailed studies, including a detailed Masterplan and Vehicle Access Strategy. This established the final configuration of all highway routes, linkages and connections to create a holistic accessible design, that would encourage sustainable travel.
6. Although the agreed strategic movement principles has established much, it would have been unable to foresee all potential effects of the development of individual parcels of the SUE and therefore the Council has behaved reasonably in considering the highway safety effects of the scheme on the surrounding area, pedestrian safety and the relationship of the site with Grange Road.

Accordingly, the Council did not refuse the scheme for a matter that should have been and was exclusively considered at the outline stage.

Absence of technical evidence

7. The Council's appeal evidence includes a submission from Waterman. This provides an assessment of the proposal and its highway impact by a professionally qualified expert in traffic and transportation. This provides a reasonable contrary view to the Appellant's evidence. This includes, at appendix A, a drawing demonstrating how the visibility splay (for pedestrians crossing south and looking right) would be compromised by the curvature of the highway and topography. The restricted visibility splay, and its effect on pedestrian safety, was explained within this evidence. The Appellants responded to this with their own drawing and photographs, which I agreed to accept at the hearing and that demonstrated a need to engage with the Council's technical evidence.
8. Concerns were also raised by the Council with respect to the deficiencies of the enhanced PV² assessment and the presence of steps to access the former railway line. This led to a discussion with respect to the PV² calculation and a minor adjustment that took into account the proximity of a GP Surgery. Accordingly, the Council's evidence provided a useful context to demonstrate its concerns with respect to highway and pedestrian safety. These matters were material considerations that led to extensive discussion in the hearing.
9. Therefore, the Council provided useful technical evidence on this matter including objective analysis. As such, I am satisfied that the Council provided adequate evidence to substantiate its reason for refusal.

Absence of objection and the general behaviour of Planning Committee

10. The Planning Committee must represent the interests of the whole community and maintain an open mind when considering planning applications. Where members take decisions on planning applications, they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.
11. As asserted by the Council, the Planning Committee is not obliged to accept the recommendation of its officers. Nonetheless, councillors should be ready to explain why they have not accepted an officer's recommendation.
12. The officer's report, when presented to Committee in August, identified that a PV² Assessment concluded that a pelican crossing over Grange Road would not be necessary. The proposal was supported by the Highway Authority and the report recommended approval. Nonetheless, it was deferred by Members for a Road Safety Audit (RSA) and to consider the suitability of a puffin crossing being installed on Grange Road.
13. The item was reported back to Committee in September, where the Highway Authority explained that a RSA, in association with the proposed geometry changes to the Hemsley Road junction, would be required for the Section 278 application, but not prior to the determination of the planning application. The

Highway Authority also confirmed that a pelican crossing would not be required following its review of the PV² assessment.

14. From the evidence, it is clear that the Committee considered the proposal in detail, with extensive discussion when it was presented both in August and September 2023. Upon refusing the application, the Council provided a reason for refusal that accorded with some of the concerns raised in discussion and I have found this reason to be reasonable, to an extent. In allowing the appeal, I have clearly come to a different view to the Committee, but this alone does not mean that the Committee's decision was unreasonable or perverse.
15. The discussion at the hearing demonstrated that the process of assessing the requirement of an enhanced pedestrian crossing is largely based on a technical assessment of the character of the road, starting with an understanding of the volumes of traffic and pedestrians involved. However, the evidence, and the associated discussion at the hearing, also demonstrated that sensitivity testing and the context of the site, including visibility for pedestrians and topography of the land are important further considerations that require planning judgement to be applied. In this context, it cannot be readily concluded that the Committee behaved unreasonably in applying such judgement to the character and context of the proposed crossing point beyond technical assessment.
16. The decision to defer the application seems to have been based on minor issues, partly based on a misunderstanding as to the operation and purpose of a RSA in connection with a Section 278 for highway works. These matters should have been fully addressed at committee in August, irrespective of the outcome of the decision. Nevertheless, the decision to refuse the application when taken only a month later in September was decisive, meaning that the delay caused to the Appellant was relatively minor.
17. Consequently, in deferring the proposal from the first committee and in not following officer advice on both occasions does not demonstrate unreasonable behaviour. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Ben Plenty

INSPECTOR