



Costs Decision

Hearing held on 30 August 2023

Site visit made on 31 August 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Costs application in relation to Appeal Ref: APP/P2935/W/23/3321097 Land West of Lancaster Park, Pinewood Drive, Lancaster Park, Morpeth NE61 3SX

- 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 Persimmon Homes (North East) for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal to approve details pursuant to condition No 3 of an outline planning permission, Ref 16/00078/OUT, granted on 28 November 2016.
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Decision

1. The application for an award of costs is refused under the terms set out below.

The submissions for Persimmon Homes (North East)

2. The costs application was submitted in writing against Northumberland County Council (the Council). In summary, the applicant has claimed that the Council has behaved unreasonably in substantive terms in regard to matters connected with the merits of their proposal. The applicant believes that the Council has prevented or delayed development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The applicant has argued that officers agreed that this Phase 2 application for the reserved matters of a wider development site should be approved because it accorded with all relevant policies, as set out in the very detailed officer report in which they recommended approval. The applicant believes that the Council's actions, as minuted, clearly demonstrate that the decision was an unreasonable and politically driven decision by elected members. The applicant believes members sought to go behind the principle of the parent outline consent to revisit it at the reserved matters stage.
4. In terms of the design related reason for refusal (RfR), the applicant has asserted that the Council has acted unreasonably because the decision is simply wrong and is highly generalised, vague and unsupported by any objective evidence.
5. In particular, my attention has been drawn to what the applicant has described as a very lengthy, iterative process and dialogue with officers about design matters. It is argued that the component elements of the design reason for refusal are expressly contradicted by the relevant design assessments contained in the officer report. The applicant has argued that the unreasonableness in the Council's approach is compounded by the Council's

hearing statement as it contains points and arguments relating to design which were not discussed at committee and are clearly contrary to their own professional opinions, as indicated in the officer report.

6. In addition, the applicant has stated that the Council has refused to approve the reserved matters when the objections relate to issues that should already have been considered at the outline stage or are covered by conditions of the parent permission. The concern about the acoustic barrier is cited as an example.
7. In terms of the access related RfR, the applicant has drawn my attention to the minutes of the Planning Committee. They believe that these demonstrate that the decision was premised upon the lack of access due to the Council's separate refusal of the adjoining Euro Garages Phase 1 proposal¹.
8. Moreover, it is argued that condition No 7 of the parent permission ensured non-commencement without an approved access. It is argued that this RfR was therefore unnecessary, unreasonable and merely served to demonstrate its true intent to revisit the principle of the permitted development.
9. In particular, the applicant believes the circumstances which contributed to a full award of costs at the Phase 1 appeal would apply equally to their situation, meaning that this reason for refusal must be unreasonable. Furthermore, the applicant has stated that despite the Council's revised position following the outcome of the Phase 1 appeal, they have incurred significant wasted time and monetary expense in addressing that matter as part of their own appeal.
10. Consequently, the applicant has respectfully requested that the Council be ordered to pay in full all of their costs in connection with and arising from the Council's decision. In the alternative, it is requested that a partial costs award should be ordered against the Council relating to the costs incurred by the applicant in addressing the access reason for refusal.

The Response by Northumberland County Council

11. The response to the costs application was made in writing. In summary, the Council has firmly argued that a decision by Members against an officer recommendation is not a listed or inferred example of substantive unreasonable behaviour in the Planning Practice Guidance (PPG).
12. Furthermore, the Council has argued that there is an element of the applicant's submissions that seeks to recover costs for the issues which triggered a costs award for in relation to Phase 1 that are simply not present in their appeal for Phase 2. The Council maintains that any unreasonableness in relation to the wider Decision on Phase 1 has been dealt with in the Phase 1 Costs Decision.
13. The Council has stated that neither of the RfRs in any way attempt to re-run the principle of development on the appeal site. The Council has maintained that there is no discussion within the relevant minutes of an objection to the principle of development. It is maintained that the decision relates to valid concerns of elected members in relation to the proposed design of the development and, at the time, the lack of access to the site.

¹ Appeal ref: APP/P2935/W/23/3318070).

14. It is held that this is a well-informed local planning committee who, in assessing a proposal and making their decision, exercised political responsibility to their electorate in the public interest. The Council has maintained that it has clearly explained and justified why they believe the design is unacceptable in their statement of case and at the Hearing.
15. In terms of the design RfR, it is argued that the Council was justified in raising concerns. The Council draws attention to specific examples of arguments advanced through the appeal concerning the reserved matters, including the proposed layout of parts of the development, permeability, open space and the relationship of the acoustic fencing with particular plots.
16. The Council has pointed out that design is a subjective area of judgment and that it cannot be plausibly argued that this was a case where only one judgment was reasonably open to elected members. It is argued that even if the substantive design points raised were not accepted at appeal, that does not mean that the Council was substantively unreasonable in raising them. The Council maintains that they were valid points of concern raised on subjective design matters.
17. It has been argued that officers are entitled, within the bounds of their professional body and judgment, to explain and substantiate the concerns of elected members. It is argued that in subjective matters such as design, it is appropriate for an officer to revisit matters following a determination by members and consider whether they can professionally support that view and that it is not unreasonable for them to provide that view at appeal. The Council believes that those representing their case acted in line with their professional code throughout the Hearing.
18. In terms of the access RfR, the Council has stated that at the time of the Phase 2 decision, the Council had already refused the reserved matters for the neighbouring Phase 1 proposal, meaning that there was no way in which the appeal site could be accessed. The Council has pointed out that this was the narrow scope of that RfR, as recognised in the Appellant's short Transport Statement of Case. The Council has maintained that this was a reasonable concern at the time of the Decision.
19. The Council believes that there is a clear distinction between the minutes and RfR in the Phase 1 application and those relating to the Phase 2 proposal for this current appeal. This is because there is no reference to the validity of the reserved matters application, and it has formed no part of the Council's case.
20. The Council has emphasised that the access constraint was resolved when the Phase 2 appeal was allowed on 17 July 2023 and that they withdrew that concern at the first appropriate moment which was the submission of their statement of case on 26 July 2023. The Council has maintained that was an entirely appropriate and reasonable response to that change in circumstances.
21. The Council has drawn attention to the fact that even if they are found to have acted unreasonably, it is a necessary part of any costs application to show that such unreasonable behaviour has directly led to unnecessary costs. They have argued that the access RfR was only addressed very briefly in one page in a Transport Statement of Case and no other evidence was produced in relation to it. The Council has also pointed out that although the concern over access had

been resolved, the Hearing itself still needed to go ahead in relation to the design related reason for refusal.

22. For all of these reasons, the Council has respectfully requested that the Costs Application be dismissed in full.

Reasons

23. Parties in planning appeals normally meet their own expenses. However, the 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.
24. In allowing the appeal for the reserved matters of Phase 2, I found that the proposed design accords with the relevant parameters of the parent outline permission and the matters that were reserved. Furthermore, the proposed reserved matters have been found to accord with the relevant design policies of the development plan and with national policy and guidance.
25. I note that the proposed design was not contentious at the determination stage, as evidenced by the officer report. However, officers were entitled, within the bounds of their professional body and judgment, to explain and substantiate the concerns of the elected members who had departed from their recommendations.
26. The content of the committee minutes is limited. Although that approach is unfortunate, I accept that in subjective matters such as design, it is appropriate for an officer to revisit matters following a determination by members and consider whether they can professionally support that view and that it is not unreasonable for them to provide that view at appeal. Furthermore, throughout this Hearing, I was satisfied that those representing the Council's case acted in line with their professional code.
27. In the case of this Phase 2 appeal and, in contrast to that of Phase 1, the Council's case clearly articulated concerns about potentially valid considerations on the subjective matter of design that was relevant to the reserved matters.
28. The parent outline permission is subject to a number of planning conditions. This has presented a risk of some overlap with some the matters that were reserved, particularly in respect to layout and landscaping. This added layer of complexity has not been helped by the fact that some of these conditions, which have interdependencies with the reserved matters, have not yet been discharged.
29. With that in mind, I note that the principle of acoustic barriers was determined at the outline stage. Indeed, the noise impact assessment associated with the parent permission includes reference to high acoustic barriers around gardens of plots adjacent to the A1 and along the site boundary, adjacent to the proposed commercial area. Therefore it is reasonable to accept that this mitigation would feature in the reserved matters scheme.
30. However, although condition No 37 of the parent outline consent seeks to finalise this detail, there is some overlap between it and the reserved matters. The purpose of the reserved matter of layout includes sealing the location of proposed buildings. The purpose of the reserved matter of landscaping includes sealing details of the means of enclosure, which in this case includes acoustic

fencing. Therefore, whilst the principle of an acoustic barrier had already been established on noise impact grounds, how that a barrier would inter-relate with the layout of nearby residential dwellings and wider context were indeed relevant considerations at this reserved stage of the planning process.

31. Consequently, in this case it was reasonable for the Council to make a determination of the acceptability of the juxtaposition between the acoustic barrier and any dwellings. The fact that I do not concur with the Council's stance does not undermine this finding.
32. Significantly, unlike the Phase 1 appeal, the particular case which was put forward in respect to design related matters was not ambiguous, poorly evidenced or unsubstantiated. The fact that I did not concur with those subjective arguments does not mean they were unreasonable in this particular instance.
33. In terms of the access related RfR, the applicant's argument about the control which condition No 7 of the parent permission would exercise on commencement is a pertinent point. However, the outcome of the Phase 1 appeal was issued shortly before the Phase 2 hearing, and I am satisfied that the Council acted both appropriately and promptly in response to that. Only limited highways evidence had been produced because of the narrow scope of the access RfR. I am also mindful that there were 2 separate RfRs and the design related RfR still stood.
34. Therefore, although I have some empathy for the predicament which the applicant found themselves in as a consequence of the Council's decision on Phase 1 in respect to that particular RfR, it has not been sufficiently demonstrated that the Council's actions in regard to site access directly led to the applicant incurring costs which would justify a partial award.
35. Overall, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is therefore not warranted.

C Dillon

INSPECTOR