The Planning Inspectorate

Costs Decision

Inquiry Held on 3 April 2024

Site visit made on 11 April 2024

by SRG Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22nd May 2024

Costs application in relation to Appeal Ref: APP/X1355/W/23/3334214
Land north of George Pit Lane, Great Lumley, County Durham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Bellway Homes Limited (North East) for a partial award of costs against Durham County Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 148 dwellings with associated access, infrastructure and landscaping.

Decision

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

The submissions for Bellway Homes Limited (North East)

2. Submissions[1] for the appellant were made in writing.

The response by Durham County Council

3. The response[2] by the Council was made in writing.

Reasons

4. Planning Practice Guidance[3] says that costs may be awarded against a party who has behaved unreasonably and as such caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. One aim of the cost's regime is to encourage Council's to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.

5. Dealing first, with the Council's evidence relating to spatial policy. Here, the submissions relate to (a) that the proof of evidence was written without visiting appeal site, and (b) the evidence lacked substance. Albeit the evidence on spatial policy sought to focus on reasons for refusal (RfR) 2 and 5 (Annex 1), it overlapped other areas of the Council's case.

6. The witness confirmed that although he did not visit the site before writing his evidence, he had previously visited the site on several occasions and was familiar with the area and its character. Whilst I found this admission surprising, there is nothing in the inquiry rules or guidance that requires a witnesses to visit the site before writing a proof. Moreover, there was nothing

[1] ID12.
[2] ID13.
[3] Appeals, Paragraph 027 Ref ID 16-027-20140306.

to suggest that a failure to undertake a visit resulted in any misunderstanding of the nature of the area. On this matter, the Council did not act unreasonably.

7. Turning to the substance of the Council's case on spatial planning. The witnesses' inability to answer questions on the evidence he presented, resulted in a distilling of the case to an almost total reliance on a permeability and safety point that had no support in planning policy or his evidence. In this context, the Council did not substantiate the RfRs this witness looked to address. The evidence amounted to generalised assertions that were unsupported by any objective analysis. On this matter, I consider the Council acted unreasonably causing the appellant unnecessary expense to rebut the case relating to spatial policy.

8. Dealing with the Council's evidence to address RfR 1 and 3 relating to landscape and visual impact. The witness explained that the Council's internal practice when advising on landscape and visual matters was to identify the effects and pass that conclusion to those who undertook the planning balance. It was put to the witness that the proper approach should be to assess the level of harm, assess the mitigation and then conclude whether in this case, by reference to the requirement of development plan policy, the proposal would result in unacceptable harm[4]. The witness acknowledged that this was a reasonable approach, but not one that the Council used. When taken through the impact of the proposal adopting the approach explained by the appellant, the landscape witness conceded that, with mitigation, the proposal would not cause unacceptable harm.

9. The approach the Council adopts to supplying internal advice is for it to decide. However, whatever approach is adopted it has to be able to withstand scrutiny. Here, the Council did not properly engage with the landscape and visual impacts of the proposal and as such substantiate the landscape RfR. The Council acted unreasonably, and the appellant incurred unnecessary expense in rebutting the landscape RfR.

10. Turning to the case produced by the witness on sustainable transport. The appellant submits that the witness did not, (1) properly engage with and distinguish the basis on which statutory consultees were content with the scheme and (2) show the sustainability failings of the proposal. Instead, the witness made generic, unsubstantiated points that were ultimately accepted as not making a material difference to the overall conclusion not to withhold consent.

11. Regarding the consultation responses, committee report and the proof of evidence. Although, this section of the proof appears to conflate matters, reading the proof and the committee report together and understanding the role of the highways officer, I am clear that the witness did not advance a case contrary to the advice of the Highway Authority. Turning to the consultation response by the Sustainable Transport Officer (STO) and the thrust of the proof of evidence. It is not clear from either the proof or the committee report what analysis the STO undertook when considering the application. Neither was it clarified under cross-examination. On that basis, I believe it would be unsafe to conclude that the STO was content with the sustainability credentials of the proposal. However, the committee report and the proof of evidence does consider and adequately deal with the sustainability credentials of the site,

[4] Policy 39 – Landscape, County Durham Plan.

concluding that it was unsustainable. The appeal decision shows that I did not agree with all the matters raised by the Council's witness and despite the concessions made, I did agree with the fundamental thrust of the case that the proposal was not sustainable development thus contrary to the thrust of the development plan. As to the planning witness, the appellant submits that the Council acted wholly unreasonably by continuing to defend the appeal after she conceded that the appeal ought to be allowed.

12. In my view, the concessions made by the sustainable transport and planning witnesses rather than being a deficiency in the Council's case were the result of a series of subtly directed questions by a skilled advocate and the inability of the witnesses to grasp the direction of the examinations. That said concessions made by witnesses are material considerations in concluding on a proposal and I did not ignore them. However, as the decisionmaker, whether I am bound by them is not, in my view, a binary choice. As the various examples of Case Law referred to show, I am entitled to bring to bear my own judgement, both as a planning professional and an Inspector, to weigh the written and oral evidence before me. This is particularly so where, as in this case, the final decision turned on a matter of planning judgement i.e., whether the proposal represented sustainable development and the relevant witness's failure to grapple with the basis of their own evidence. In this context, despite the direction that the cross-examinations took the witnesses, I consider the Council was able to substantiate its case in relation to the second main issue, sustainability. On this basis, I consider that, continuing the case in the face of the planning witness's concessions, the Council did not act unreasonably.

Conclusion

13. Unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Policy Guidance has been shown and a partial award of costs is justified.

Costs Order

14. 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 Durham County Council shall pay to Bellway Homes Limited (north East), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in rebutting reasons for refusal 1, 3 and 5; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The applicant is now invited to submit to Durham County 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.

George Baird
Inspector

Annex 1 – Reasons for Refusal

1. The development would significantly erode the open countryside setting of the settlement that currently exists and which cannot be adequately mitigated or compensated for in conflict with Policy 6 and 10 of the CDP.

2. Due to its scale and location the proposal would create a settlement extension that would relate poorly to the existing configuration of the settlement both physically and visually and therefore conflict with policy 6 of the CDP.

3. The proposal would overall result in unacceptable harm to the landscape and the intrinsic character of the countryside which cannot be adequately mitigated or compensated for contrary to policy 10 and 39 of the CDP and part 15 of the NPPF.

4. The application fails to demonstrate that the development would have good access by sustainable modes of transport to services and facilities in Great Lumley contrary to criteria f of policy 6 of the CDP, policies 21, and 29 of the CDP and Paragraphs 105 and 110 of the NPPF.

5. When assessed against the Building for Life SPD the proposal fails to meet an acceptable design standard and is in conflict with CDP policy 29 and part 12 of the NPPF and there are no significant overriding reasons that would justify such a departure from this policy.