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## Costs Decision

Site visit made on 4 June 2024

**by C Dillon BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 July 2024**

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### **Costs application in relation to Appeal Ref: APP/A2335/W/23/3326750 Land east of Fulwood Drive, Bare, Morecambe, Lancashire LA4 6QD**

- 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 Oakmere Homes (Northwest) Ltd for a full award of costs against Lancaster City Council.
  - The appeal was against the refusal of planning permission for development described as "outline application for the development of 129 residential dwellings and creation of new access."
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### **Decision**

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

### **The submission by Oakmere Homes (Northwest) Ltd**

2. The applicant considers that the Council has acted unreasonably by failing to substantiate its reasons for disengaging the tilted planning balance when refusing planning permission. It is argued that this has delayed development which clearly should have been permitted, having regard to the development plan, national policy and all other material considerations. Furthermore, the applicant believes that this has caused unnecessary and wasted time and expense in pursuing an avoidable appeal.
3. In particular, the applicant considers that the Council has failed to substantiate both resulting reasons for refusal for the purposes of the appeal. The applicant believes that the Council's evidence at appeal is not a detailed, objective 'on the ground' assessment of the landscape and heritage effects of the proposed development on the Key Urban Landscape (the KUL) designation and the relationship of the setting to the significance of the designated heritage asset. Furthermore, the applicant argues that this evidence is not specific to the appeal site and outline scheme; having being taken from the Local Plan evidence base which was prepared at a high level and to assess a much larger potential development site.
4. The applicant also points out that the Council does not challenge the assessment of the importance of Torrisholme Barrow, in terms of its heritage values and significance, set out in the applicant's heritage evidence. The applicant argues that the Council also does not adequately explain, and evidence, the rationale for its weighting of the benefits of the proposed development and highlights some weightings which they believe are not credible and contradict the committee report. The applicant considers that the Council's evidence is silent on why the weight given to the less than substantial harm should be justifiably increased. It is asserted that the Council's case has

been changed to attempt to retrospectively justify the planning committee decision.

5. Furthermore, the applicant argues that the Council's approach is especially unreasonable as the planning committee carried out the same decision-making exercise in connection with another application and concluded that the relevant heritage policy test at paragraph 208 of the National Planning Policy Framework 2023 (the Framework) was passed and therefore the tilted balance prescribed in paragraph 11(d) of the Framework was applied. The applicant is of the view that this resolution to grant planning permission in that case established that the great weight to be given to less than substantial heritage harm was outweighed by the significant weight to be given to the delivery of 116 market and affordable homes in the context of a 2.1 year housing land supply. The applicant argues that it is not reasonable and credible for the Council to make conflicting decisions on the application of paragraph 208 of the Framework when using identically weighted heritage harm and public benefit input data.
6. For these reasons, the applicant respectfully requests a full award of costs is made.

### **The response by Lancaster City Council**

7. The Council is of the view that they have exercised their duty to determine the application in a reasonable manner. In particular, the Council draws attention to the fact that committee members resolved to refuse planning permission contrary to the recommendation within the officer report because a different planning balance was reached as more weight was applied to the heritage harm. The Council maintains that the committee report clearly identifies harm and conflicts with the development plan.
8. The Council maintains that the decision to refuse the application was because the planning committee considered that the heritage harm caused by the proposal, including the conflicts with the adopted development plan, were not outweighed by its public benefits. The Council states that the tilted balance did not apply in view of the stance of the committee members as the harm to the significance of the designated heritage assets provided a clear reason for refusing the application. In addition, the Council draws attention to paragraph 3.5 of its appeal statement which states that if a tilted balance is applied, then the harm would significantly and demonstrably outweigh the benefits.
9. Furthermore, the Council considers that the weighing of the benefits against the harm caused by a proposal in terms of both heritage and other harms is a matter of planning judgement. Therefore, it is maintained that the members of the planning committee were entitled to reach a different view on this and could apply different weight to the benefits and harm.
10. In terms of the other application referred to by the applicant, the Council argues that each application has been considered on its own merits and, in that case, it was a full planning application and so all the details of the proposal were known and a shorter timescale for commencement had been agreed. Therefore, the Council disagrees that the benefits of each would be directly comparable.

11. Consequently the Council respectfully requests that the application for costs be refused.

## **Reasons**

12. 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.
13. In this case, unlike the case officer, the members of the planning committee found that the relevant heritage policy test now prescribed in paragraph 208 of the Framework was not passed, and so the tilted balance was disengaged, and planning permission was refused as the product of a flat balance. I am satisfied that this is because the planning committee members applied greater weight to the identified heritage harm and subsequent conflict with the development plan and reached a different view on that heritage balance.
14. In doing so, it may well be that the Council could have better articulated the reasons why planning committee members gave more weight to the less than substantial heritage harm than the case officer. Nonetheless, the committee did not introduce any other reasons for refusal than those relating to the harm and conflicts that were already set out in detail within the committee report. The decision notice is sufficiently clear as to the reasons for the refusal.
15. Members of the planning committee were entitled to reach a different decision to the case officer. This is not unreasonable particularly in instances where competing matters need to be weighted and balanced when undertaking necessary policy tests. The nature of the Council's evidence differs to that of the applicant, but it was not inadequate. Despite the available evidence from both parties, the balancing exercise still demanded a degree of subjectivity in terms of the importance of the heritage asset and the bespoke nature of the harm, as well as verification through site observations.
16. Furthermore, it does not necessarily follow that less than substantial harm infers an insignificant harm or one which commands a reduced level of weight. Neither is less than substantial harm a static measure in any balancing exercise.
17. In line with the Framework, great weight should be given to the conservation of the Torrisholme Bowl Barrow (the Barrow) as a nationally important designated heritage asset of the highest significance. I am satisfied that this is what the committee members did in undertaking the required heritage balance.
18. In view of the outcome of the balance made between the heritage harm and public benefits, the Council's approach thereafter represents the correct interpretation of the Framework.
19. The Council has confirmed sufficient differentials between the appeal scheme and the other planning application referred to. Whether or not the Council has reached decisions on other sites which run counter to the common stance that I have reached in this particular instance in respect to the KUL and heritage matters does not justify the harm that I have found or diminish the resulting conflict with both the development plan for the area and the Framework.

20. The attribution of weight against competing matters is a matter for the decision maker. In examining the evidence before me in conjunction with my site observations, I have given great weight to the conservation of the Barrow as a nationally important designated heritage asset of the highest significance. In doing so, I have attributed considerable importance and weight to the identified less than substantial harm. Despite attributing greater weight than the Council to some of the public benefits, I have reached the same outcome.
21. As no unreasonable behaviour has been found, there can be no substantiated claim of wasted expense.

### **Conclusion**

22. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*C Dillon*

INSPECTOR