



Costs Decision

Site visit made on 4 October 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2024

Costs application in relation to Appeal Ref: APP/U2750/W/24/3344107 land to the north of Back Lane, Tollerton (at the junction of Moorlands Land), YO61 1PZ

- 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 Mr Ian Reynolds of Stephenson's Estate Agents for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for the erection of 3 dwellings and associated works.
-

Decision

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

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.
3. The PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant considers that the Council has behaved unreasonably in refusing planning permission for the development and should have granted planning permission having regard to the development plan and other material considerations including the recommendation of planning officers.
5. Officers recommended to the Planning Committee that the proposed development be granted planning permission subject to conditions. The recommendation is set out in the Officer Report and includes a well-reasoned analysis of the planning issues and the consultation responses that were received. Members of the Planning Committee, who are entitled to make their own decision, refused planning permission for the development for four reasons. The reasons form the main issues in the appeal.
6. On the matter of housing mix, the Council refused planning permission as it was considered the proposed development did not meet the requirements of Policy HG2 of the local plan and did not reflect local need.

7. The proposed development would provide one 2-bedroom property, one 3-bedroom property and one 4-bedroom property. Two of the properties would be bungalows, although one of which has one of its three bedrooms in the roof space. Even at only three dwellings, it is clear that there is a reasonable mix of dwelling sizes proposed.
8. The supporting text of the policy identifies that two and three bedroom properties are of greatest need. Two-thirds of the dwellings would be of this category. One of the properties, namely the two-bedroom bungalow, would be of the type the Council have stated they are keen for developers to include in their schemes as there is an identified shortage of such properties.
9. The Council's case makes reference to Table 3.1 of the Housing SPD 'Mix of housing for market and affordable housing'. Although it is a material consideration, the table is part of a document which is guidance and is a 'target' not a statutory policy. The mechanics of the development, when considered against the target mix, are such that it, and indeed any proposed three dwelling development, would not be possible to provide the mix as set out. It would therefore fall on the requirement to deliver a housing mix that complies with the aims of the policy, which I have found that the proposed development does.
10. The Council link the size of the units, which exceed the Nationally Described Space Standards (NDSS) with affordability. The policy does not, however, make this link. There is also no substantive evidence submitted to support the Council's suggestion. Reference was also made to adaptability and an ageing population. Again, there is limited substantive evidence to support this view. Two of the dwellings proposed are bungalows, and whilst one has a bedroom in the roof space, two bedrooms and all other habitable rooms are on the ground floor.
11. There is therefore no substantive evidence or objective analysis to support the Council's view that the development fails to provide an appropriate mix of housing.
12. The Council considered that the development failed to make the necessary affordable housing provision as the site should be taken with the adjacent development. The relevant policy states that planning permission will be refused for proposals where it appears that a larger site has been sub-divided into smaller parcels in order to avoid developer contributions for affordable housing.
13. The Council's case is largely based on the fact that access is taken from the adjacent site. The evidence before the Council however confirmed that the sites were in separate ownership, and had been for some time, and that the adjacent development was completed.
14. I also find it quite pertinent that from considering the background to the development, the reason that the access is shared with the adjacent development is borne out of a reluctance to access the site from elsewhere for highways and ecological reasons. It follows that there are material planning reasons why the proposed access is as such, and not for reasons relating to avoiding affordable housing contributions.

15. The fact that the design of the dwellings is similar to those of the adjacent development also does not provide a sound basis for the deliberate subdivision of the site. There are differences in the design, not least that a two-storey dwelling is proposed, and it is not uncommon for a development to take cues from the surrounding built environment in any event.
16. The evidence before the Council therefore simply did not support the view that there has been a deliberate subdivision in order to avoid affordable housing contributions or that the sites should be considered together.
17. The Council's third reason for refusal is vague and generalised. It does not state how it relates to the proposed development, nor does it allege any harm. Given the size of the settlement overall, when considering a proposal for an additional three dwellings, it would be hyperbole to arrive at the conclusion that the character and appearance of the settlement is unacceptably harmed.
18. I accept that matters of character and appearance are generally matters of planning judgement where differing views can be expressed by Officers and Members. Nevertheless, in this case, there is no substantive evidence that the proposed development would cause the settlement to reach a 'tipping point' that causes unacceptable harm. Members were presented with a well-structured analysis of the growth of the settlement since 2015, which does not support the suggestion that there has been excessive or uncontrolled expansion which would justify the moratorium on any further development that members were effectively seeking to impose.
19. In terms of highway safety, the Council refused planning permission as they considered that the temporary construction access would cause harm due to the width of the single-track roads leading to conflict between construction vehicles and existing vehicular traffic.
20. Highways Officers had advised that subject to the imposition of conditions, including a condition requiring the submission of a Construction Management Plan, the proposed development was considered to be acceptable in highway safety terms. This advice was based on the submission of details and discussions with the applicant and a professional analysis on the matter.
21. I acknowledge that the highways aspect in terms of the temporary construction access is not a quintessential arrangement. It does not however follow that it is unacceptable in terms of its highway safety impacts or the impacts would be severe. Whilst an element of planning judgement can be used, this must be supported by demonstrable evidence which was not the case here.
22. The facts are that the arrangement is temporary, and like the Council Highways Officer, I have found that it would not be unacceptable in highway safety terms. Both the Highways Officer and I have found that an appropriate planning condition would be sufficient to deal with the matter.
23. The PPG outlines that refusing planning permission on a planning ground capable of being dealt with by condition risks an award of costs, where it is concluded that a suitable condition would enable the proposed development to go ahead.

Conclusion

24. Therefore, having regard to the Council's reasons for refusal they have behaved unreasonably by refusing planning permission for a development which should clearly have been permitted. There has been a failure to produce evidence to substantiate each reason for refusal, with vague and generalised assertions about a proposed development's impact, which have not been supported by an objective analysis.
25. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

26. 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 North Yorkshire Council shall pay to Mr Ian Reynolds of Stephenson's Estate Agents the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to North Yorkshire 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.

A M Nilsson

INSPECTOR