
Costs Decision

Hearing held on 10 December 2024

Site visit made on 11 December 2024

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd of January 2025

Costs application in relation to Appeal Ref: APP/W3005/W/24/3345033

- 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 Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Developments Limited for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal of planning permission for 124no. dwellings, access, attenuation basin and associated landscaping and infrastructure at **Land north of Fackley Road, Teversal, Sutton in Ashfield NG17 3HN**
-

Decision

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

Procedural Matter

2. The applicants made an application for costs at the Hearing. It was agreed that the costs submission and responses could be in writing. A short time scale was agreed for the applicants' submission. Although the applicants were a day late with the submission, I am satisfied that the delay was reasonable in the circumstances set out. The Council was given additional time to respond. No party was prejudiced by this approach and the costs application was properly made.

Reasons

3. 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.
4. The PPG goes on to explain that a local planning authority is at risk of a substantive award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fails to produce evidence to substantiate each reason for refusal; makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis; and/or refuses planning permission on a planning ground capable of being dealt with by conditions.
5. The Council's planning committee refused the proposal against the advice of Officers. It was entitled to do so as it is not bound to follow the recommendation of its Officers. Such an approach would render the committee superfluous.

- Nevertheless, the committee must be able to clearly articulate and substantiate its decision, especially when departing from professional advice.
6. The reasons for refusal are multifaceted and could have been clearer. The first concern relates to the effect of the development on the character and appearance of the surrounding area. Reason for refusal 1 sets out that the development would result in significant harm to the character and appearance of the area through the visual impact of the built form on green fields, encroachment into open countryside and reducing the green corridor. The Council does not object to the principle of the development so it must be accepted that some visual impact of the built form would occur but there is no clear explanation as to why the particular appeal scheme is considered harmful in the refusal reason or the minutes of the planning committee.
 7. The Council's appeal statement briefly sets out the main points of concern, however, it does not respond, in any detail, to the applicants' significant evidence regarding the landscape character of the area. At the Hearing, the Council referred to the detrimental effects that would be caused because of the siting of dwellings with their backs to the River Meden and the position of fencing. However, these points were not referenced in their evidence.
 8. As can be seen from my decision, I do not share the views of the Council in this case. Having regard to the committee decision and the subsequent evidence provided by the Council as a whole, I conclude that the Council failed to produce sufficient objective analysis to substantiate its reason for refusal in respect of the effects of the development on the character and appearance of the area, and this was unreasonable.
 9. At the time of writing its appeal statement, the Council withdrew concerns about prematurity, highway safety, and anti-social behaviour referred to in reasons for refusal 2. In terms of prematurity the Council stated that having regard to paragraph 49 (of the Framework Dec 2023) the Council no longer wishes to pursue prematurity. Furthermore, in respect of highway safety and anti-social behaviour the Council's statement says it would be difficult to evidence the potential impacts and provide sufficient level of proof to justify refusal. It is therefore unclear why these matters formed part of the reason for refusal. The advice from technical consultees did not support this stance. It was unreasonable of the Council to refuse planning permission on matters it could not justify.
 10. In response to the Council's concerns about prematurity, highway safety and antisocial behaviour, the applicants submitted highways and urban design statements and evidence in their planning statement. While these matters were not discussed at the Hearing in any detail, the inclusion of them in reason for refusal 2 required the applicants to consider these matters and produce statements that it had no need to.
 11. The technical evidence submitted with the application confirmed that surface water runoff rates would not be increased because of the development and the Council officer's report to committee judged that based on surface water mitigation proposed, the development would likely reduce flood risk. The Local Lead Flood Team (LLFT) did not object to the proposals. While noting the concerns raised by interested parties about flooding along Fackley Road it is not clear from the Council's decision notice or the minutes of the committee meeting what led the Council to conclude that there was a lack of evidence regarding flooding.

12. At the appeal stage the applicants submitted an updated drainage strategy. This was based on the original Flood Risk Assessment. The updated scheme demonstrated that the drainage strategy would result in a reduced surface water runoff discharge rate compared to the original strategy. Nevertheless, the overall conclusion was the same that flood risk was low or very low and surface water runoff would be attenuated. The applicants' technical evidence was part of its appeal statement. In its statement the Council did not analyse the technical evidence or seek the views of the LLFT. Nor was any substantive evidence provided at the Hearing that the proposals would lead to flooding in the area. This was unreasonable.
13. In relation to sustainable urban drainage the Council offered little either in their statement or at the Hearing to demonstrate that sustainable urban drainage systems (SuDs) would not function adequately. As set out in my decision SuDs can be addressed by condition.
14. The applicants did not object to the contributions to public realm and broadband improvements at application stage. This was not a matter on which the application was refused. As set out in my decision I agree with the applicants that these contributions do not meet all the relevant tests in regulation 122(2) of the Community Infrastructure Levy Regulations (CIL tests). The onus is on the decision maker to be satisfied that any contributions meet the relevant tests, and the Council unreasonably sort these without properly evidencing the need for them.
15. At the time of the application the Council did not address the need or otherwise for a sequential test. This was raised at the Hearing because of the proposed amendment to the site boundary. The Council expressed the view that a sequential test would be required. However, in my decision I have concluded that a sequential test would not be necessary. The consideration of this issue arises from the submission of the amended plan. The need or otherwise for the sequential test was not part of the Council's reasons for refusing the development and not a matter on which this cost decision turns.
16. Nevertheless, I conclude that the Council has failed to substantiate its concerns regarding character and appearance, flood risk and drainage. It also caused the applicants to submit evidence regarding prematurity, highway safety and anti-social behaviour, matters which the Council could not justify and later withdrew. The onus was on the Council to justify the appropriateness of contributions having regard to the CIL tests. For the reasons set out in my decision, the reasons for refusal do not stand up to scrutiny on their planning merits, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred in relation to the whole of the appeal. A full award of costs is therefore justified.

Costs Order

17. 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 Ashfield District Council shall pay to Persimmon Homes Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Amp Developments Limited, 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.

The applicants are now invited to submit to Ashfield District Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Diane Cragg

INSPECTOR