Planning Inspectorate

Costs Decision

Site visit made on 5 February 2025

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2025

Costs application in relation to Appeal Ref: APP/A2335/W/24/3353408

- 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 the erection of up to 23 no dwellings.

Land east of Arkholme Methodist Church, Kirkby Lonsdale Road, Arkholme LA6 1BA

Decision

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

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. This proposed development has taken a long time to reach this stage with the planning application being submitted in November 2022. It was approved by Planning Committee in April 2023 subject to a Section 106 agreement. However, the S106 remained unresolved, apparently due to queries and on-going discussions over certain aspects of the S106. In December 2023 the Council notified the applicant that a sequential test would now be required due to medium and high levels of surface and groundwater flooding at the site. The applicant did not consider that this was necessary and the planning application was refused in June 2024.

4. The Council based its refusal on the data within the Strategic Flood Risk Assessment (SFRA). The applicant states other Local Planning Authorities are using the Geosmart Dataset as it is more reliable. The applicant also used this to defend the lack of a requirement for a sequential test. Whilst the parties disagree on the most appropriate database, the reason for refusal clearly sets out the Council's position at that time and its decision was based on appropriate development plan policies.

5. The updated SFRA was published on 13 January 2025, this is over six months after the Council's decision. The appeal form is dated 9 October 2024, and so the revised SFRA was published three months after the appeal was lodged. However, the applicant's view is that the Council were aware of the updated flooding information at the time the appeal was lodged but continued to defend its reason for refusal.

6. Given the timeline between the planning decision and the publication of the updated SFRA information, the appellant would have had to re-submit a planning application to address the changed information or lodge an appeal. Given the timings, the Council were not unreasonable in defending its reason for refusal.

7. Once the revised SFRA was published, the Council informed the Planning Inspectorate of this the next day. Although there was a period of time before the SFRA review was published, the Council were not unreasonable in waiting until the document was published before stating that it no longer wished to defend its reason for refusal.

8. Furthermore, whilst the applicant considers that the Council has not taken into account the fall-back position of the approved 16 dwellings, I am satisfied that this matter was taken into account in the planning balance in determining the planning application. Given the fall-back position, the applicant could have progressed development of the site under the previous planning approval, therefore, development on the site has not been unduly hampered by the appeal process in relation to this proposal.

9. Although the scenario of events in terms of timings of the appeal and the review of the flooding data has prolonged the time in obtaining planning permission, this does not amount to unreasonable behaviour that has lead to unnecessary or wasted expense in the appeal process.

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J D Clark

INSPECTOR