
Costs Decision

Site visit made on 9 April 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2025

Costs application in relation to Appeal Ref: APP/M2515/W/24/3357161

12 Lindum Terrace, Lincoln, Lincolnshire, LN2 5RS

- 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 Mike Bullas of Brighter Construction Ltd for a full award of costs against City of Lincoln Council.
 - The appeal was against the refusal of planning permission for two new buildings at No.12 Lindum Terrace, providing a total of 42 apartments; 21 in each block. Associated external landscaping, including provision of 36 parking spaces either within undercrofts or external surface parking. New soft landscaping to enhance the existing mature planting areas.
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Decision

1. The application for an award of costs is partially 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. The applicant refers to a number of examples of unreasonable behaviour which I assess as follows.
3. The applicant does not identify how the Council has prolonged the appeal by introducing a new reason for refusal. Nor is it identified how the Council's reason for refusal could have been addressed through the imposition of a condition. The Council has therefore not behaved unreasonably in these respects.
4. The contributions sought by the Council are required by policies contained within the recently adopted development plan. It is therefore not necessary for them to further justify the need for the contributions; this has been established through the development plan being found sound. Further detail is also provided in the Planning Obligations Supplementary Planning Document (SPD). I had to seek detailed calculations from the Council to justify the precise amount sought with respect to open space, and the Council has acknowledged its error in calculating the contribution for affordable housing. However, on the whole the contributions sought were clearly set out in the comments from the relevant consultees during the application process. The Council has therefore not behaved unreasonably with respect to the need for the contributions sought, or the sums. Local Plan policy does support the use of viability reappraisals. There is no evidence before me as to any discussions between the parties on this point. However, this again is not unreasonable behaviour on the part of the Council, as it is an approach supported by the development plan.

5. The applicant has not specified what relevant information they sought from the Council at the application stage which was subsequently only supplied at appeal. There is no evidence before me to indicate any further detail on this point was sought by the applicant when the Council was considering their proposal, or that the Council did not provide relevant information only at the appeal stage. The information provided by the Council at the appeal is largely available within the SPD. I therefore find that the Council has not behaved unreasonably with the evidence they have submitted to defend their decision.
6. The development plan, in its affordable housing policy, does set out the criteria for a viability appraisal to be able to demonstrate that the development proposed would not be viable. This is further supplemented by the SPD. It is widely accepted in the planning system that it is not reasonable to require development to make contributions that would render the scheme unviable. However, it is a matter of planning judgement for the decision maker how much weight they chose to ascribe to the harm that would arise from the failure of a development to make such contributions. The Council therefore did not act contrary to, or not follow, well-established case law in this respect.
7. However, while Members are not bound to follow the advice of their Officers, they are required to substantiate their reasons for refusal, and it is unreasonable to make vague, generalised, or inaccurate assertions about a proposal's impact which is unsupported by any objective analysis. The Council's reason for refusal and statement of case do not provide any robust reasons to justify departing from the development plan insofar as relates to affordable housing, as the policy and SPD taken together allow for the approach taken. Nor is there any objective analysis of the harm that would arise from the proposal not making the other contributions sought. In their Statement of Case, the Council set out its view that 'members of the committee would not be able to provide additional supporting evidence during a committee meeting to justify their decision'. This is plainly wrong: if the Committee were not able to fully justify their decision, then they should not have taken it until they were in possession of sufficient evidence to do so.

Conclusion

8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the harm arising from the failure of the proposal to provide contributions towards affordable housing, health, education, green infrastructure and playing fields. A partial award of costs is therefore warranted.

Costs Order

9. 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 City of Lincoln Council shall pay to Mr Mike Bullas of Brighter Construction Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in arguing against the Council's arguments with respect to the harm arising from the failure of the development to make contributions towards the provision of affordable housing, health, education, green infrastructure and playing fields; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to City of Lincoln Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jennifer Wallace

INSPECTOR