



Costs Decision

Site visit made on 8 October 2019

by **K Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Costs application in relation to Appeal Ref: APP/N2535/W/19/3233948 Land off The Hawthorns, Nettleham, Lincoln

- 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 J Dixon, J Gauke, J Pickwell and J Pickwell for a full award of costs against West Lindsey District Council.
 - The appeal was against the grant subject to conditions of planning permission for the erection of up to 63 no. dwellings with garages, access roads, footpaths and open space-access to be considered and not reserved for subsequent applications.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG advises 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 or failing to determine planning applications, or by unreasonably defending appeals.
3. The appellant's case is essentially that the Council, in granting permission for a lesser number of dwellings than applied for, acted unreasonably as its decision contradicted its own development plan policy and was based on vague, inaccurate assertions not supported by objective evidence. The fact that the Planning Committee did not agree in full with the officer's recommendation is not itself justification for an award of costs. However, the reasons for doing so, which in this case resulted in a condition limiting the development to a lower number of dwellings than applied for, need to stand up to scrutiny and be supported by robust objective evidence.
4. The Council's response to the costs application is limited to stating that at the Planning Committee meeting on 9 January 2019, Members were not persuaded the site could accommodate 63 dwellings, but in order to act in a positive manner and grant permission, it was felt necessary to impose the condition.
5. As stated in my main Decision, the Council has offered little evidence at appeal as to why a proposal for 50 dwellings was considered acceptable, but one for 63 dwellings would not be. The minutes of the Planning Committee meeting state that towards the end of the debate Members discussed how many

- dwellingings they would like to see on the site. There is no record of the reasons why 50 dwellingings was chosen, beyond earlier oblique references to the fact that this was the indicative allocation number for the site. Furthermore, the reason for imposing the condition on the Council's decision notice refers to protecting the character of the area, integrating with adjoining built residential form and protecting residential amenity. However, there is little, if any, direct reference in the committee minutes as to why Members considered that 50 dwellingings would not cause harm in these respects, but 63 dwellingings would. Moreover, the Council has advanced no arguments in respect of these matters at appeal.
6. Instead, the Council's case focused on the need to respect the integrity of the housing allocations in the CLLP and NNP. However, in relying primarily on simple arithmetic of number of dwellingings granted, the Council at appeal did not acknowledge in any meaningful way the exceptions which exist in the relevant policies to allow a greater quantum of development where it is shown to meet stated criteria, or the clear guidance in the CLLP that developers should not be constrained by the indicative allocation and are encouraged to produce the most appropriate design-led solution. Consequently, no evidence was advanced to demonstrate what harm would occur should an additional 13 dwellingings be permitted. Rather, the perceived threat of setting a precedent appears to have been at the forefront of Members' minds in restricting the development to 50 dwellingings, a threat for which no evidence has been provided, nor has the different approach taken to other allocated sites in Nettleham been explained.
 7. The Council has persisted at appeal with an argument on the principle of the spatial strategy, but has failed to engage with the clear exceptions laid down in the policies, and has not produced any substantive evidence to demonstrate why an additional 13 dwellingings would cause demonstrable harm in planning terms, which, ultimately, I have found they would not. In failing to produce evidence and making inaccurate assertions about the proposal's impact, unsupported by objective analysis, the Council could not substantiate its reasons for imposing the condition limiting development to 50 dwellingings. This amounts to unreasonable behaviour as set out in the PPG and it follows that the appellant has been put to the unnecessary expense of making the appeal.
 8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 West Lindsey District Council shall pay to J Dixon, J Gauke, J Pickwell and J Pickwell 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.
10. The applicant is now invited to submit to the 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.

K Savage

INSPECTOR