



Costs Decisions

Hearing Held on 23 November 2021

Site visit made on 24 November 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Costs application in relation to Appeal Ref: APP/N2535/W/21/3269692 Land off Baker Drive, Nettleham, Lincolnshire, Easting 500414, Northing 375734

- 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 Larkfleet Homes for a full award of costs against West Lindsey District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of 33 Entry Level Homes and associated infrastructure.
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Costs application in relation to Appeal Ref: APP/N2535/W/21/3271598 Land off Baker Drive, Nettleham, Lincolnshire, Easting 500414, Northing 375734

- 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 Larkfleet Homes for a full award of costs against West Lindsey District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of 30 Entry Level Homes and associated infrastructure.
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Decision

1. The applications for an award of costs are refused.

The submissions for Larkfleet Homes

2. The costs applications were initially made in writing before the hearing. In summary, this sets out that the Council has not explained why they came to an alternative position to their Officers and that the Council's appeal statement is limited to the equivalent of a single page. No further explanation is provided and overall the Council's case is based on vague generalisations which are not supported by any objective analysis. Reliance on the reference to 20 dwellings per hectare in Policy D-6 of the Nettleham Neighbourhood Plan (NP) is unreasonable as it is not a policy requirement, fails to acknowledge national policy, offers no explanation as to why a view contrary to that of Officers was taken and is inconsistent with decisions made on adjoining land.
3. The costs applications were added to at the hearing and the appellant made final comments in response to the verbal costs response made by the Council. These verbal representations are both included within Annex A.

The response by West Lindsey District Council

4. The Council provided a written rebuttal prior to the hearing. This sets out that the referral of the planning applications to the Planning Committee and their subsequent refusal was not unreasonable, and the development plan and all other material considerations were taken into account. The Planning Committee are entitled to take a different view to Officers. The Statement of Case is one part of the evidence of the appeal and further oral evidence will be provided at the hearing which expands on the reasons provided.
5. The Council's verbal response to the appellant's added to costs applications is also included in Annex A.

Reasons

6. 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.
7. Whilst I accept that it will have been frustrating to the applicant that the Council Members took a different view to that which was recommended by their Officers, they were entitled to take this course of action and it does not in itself represent unreasonable behaviour.
8. The Council's Statement of Case for the appeals, where it focusses on the reasons for which it refused the planning applications, is brief. It for the most part recounts the planning history of the appeal site and provides a description of it. There is no detailed explanation or expansion of the reasons for refusal.
9. However, at the hearing the Council was able to expand in detail on the specific matters which are of concern to it. The crux of this concern is in relation to the density of the proposed development and the Council's case was made primarily in reference to Policy D-6 of the NP, which amongst other criteria requires housing proposals to recognise and reinforce district local character and to reflect existing residential densities in the locality. This consideration then feeds into paragraph 72 of The National Planning Policy Framework (The Framework).
10. An assessment of density is in many respects subjective. It can depend for example on the geographical area which forms the basis for consideration. It is possible for parties to provide different examples and figures in support of their position and ultimately there is a planning judgement to be made in deciding whether the density of the proposed developments do or do not reflect existing densities in the locality. There is no definition of 'locality' in Policy D-6 to aid discussion and assessment of this point.
11. The Council did place reliance on the text which accompanies Policy D-6 in this respect even though this is not included in the policy wording itself, but this was clearly in the context that this has been set out as an evidenced figure of typical density in the settlement as a whole. They were able to draw reference to specific developments close to the site and elsewhere in the settlement where dwellings have been built at such densities. Ultimately this formed the basis of their case and their judgment on the matter of density in the locality.

12. Whilst I disagree for the reasons that I have set out in my decision letter, it was not unreasonable for the Council to pursue a contrary view and I am satisfied that they adequately defended their position on density at the hearing.
13. There were elements of the Council's case that could not reasonably be substantiated, in particular that the height and scale of the proposed dwellings would not be appropriate, given the similarities to the existing housing development opposite. These were not however actively pursued at the hearing. There is also a degree of inconsistency in respect to the planning permission that was granted for 7 dwellings adjoining to the appeal site, which was not addressed by the Council during the proceedings.
14. With respect to the parking considerations arising in Appeal A, there was no substantive evidence brought forward to counter that provided by the applicant or in light of the fact that there was no objection from the Highway Authority. However, it was not necessary for the applicant to draw on further technical documents beyond those which had already been submitted in support of the planning application.
15. In conclusion, the Council substantiated its position in relation to density and on that basis the appeals could not have been avoided. The applicant furthermore did not need to draw on additional information to address the reason for refusal relating to parking or to address the other matters that arose, and which are outlined above. Therefore, the applicant has not incurred unnecessary or wasted expense in the appeal process. Consequently, the tests for a successful costs award have not be met and both costs applications must fail.

Graham Wraight

INSPECTOR

Annex A

Verbal additional comments of the appellant

16. In response to the Council's written response and what we have heard today, the Council's case is absent of evidence relating to density and design. Their appeal statement quotes policies but does not explain why the proposals are contrary to them. It lists a range of issues including the site and surroundings and height, scale, form and plot width but the only real issue seems to be density. In their written response the Council states it would explain these points further at the hearing, but nothing has been heard other than density.
17. There is an absence of an explanation relating to the impact on character, and a misconception of the NP by reference to 20 dwellings per hectare. The Council has misunderstood the case in how it has been presented, lots of references have been made to the absence of need and to ghettos. Concern has been raised about the principle of development but that is agreed in the Statement of Common Ground.

Verbal response of the Council

18. Members do not have to accept the recommendations of Officers, there has been a divergence of opinion. The proposals are not in keeping with the character of the area and that is a subjective matter. This judgement is not unreasonable, and the Council have not acted unreasonably.
19. The Council has relied on paragraph 72(b) of the National Planning Policy Framework, quoted full policies and integrated these with the main issues. Density relates to the settlement and this has an impact on the settlement and the character of the village as a whole.
20. This is the main issue. There is a principle in paragraph 72(b) but the proposal does not comply with this and evidence has been produced to show why the proposals would be detrimental to the surrounding area, namely the settlement and the village. There has not been a misunderstanding in relation to Policy D-6 of the NP, it is a difference in interpretation.

Verbal final comments of the appellant

21. Accept that the Council can come to any decision contrary to Officer recommendation, but it needs to be evidenced. Have heard that the proposals do not comply but at a loss to understand why other than the reference to density. It is not an interpretation of Policy D-6 of the NP, the policy does not require 20 dwellings per hectare.