

Costs Report to the Secretary of State for Communities and Local Government

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an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 3 September 2014

TOWN AND COUNTRY PLANNING ACT 1990

STOCKTON-ON-TEES BOROUGH COUNCIL

APPEAL

by

TIVIOT WAY INVESTMENTS LTD

Inquiry held on 15-17 July 2014

Land at Little Maltby Farm, Low Lane, Ingleby Barwick TS17 0QR

File Ref: APP/H0738/A/14/2214781

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- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Tiviot Way Investments Ltd for a full award of costs against Stockton-on-Tees Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for residential development (up to 550 homes), local centre (2500 m²) with means of access.

Summary of Recommendation: The application for a partial award of costs be granted.

The Submissions for Tiviot Way Investments Ltd

1. The Council has sought, contrary to the advice of their Officers, to apply green wedge policy as if were a policy relating to green belt or attractive landscapes. This is made clear in the evidence of Councillor Rose who referred, variously, to loss of an open area, openness, visibility and 'countryside'. The primary purpose of a green wedge is to maintain the separation of settlements and the critical test, followed by Council Officers, is whether the extent of land that would remain between settlements is sufficient to retain their separate identity. This was the test that was applied in the Low Lane development appeal decision and should have been the test applied by the Council. They did not apply the test and no coherent evidence was brought forward to substantiate the reason for refusal on this matter.
2. There is no policy support for maintaining an objection to the proposed development on the grounds that it would be harmful to biodiversity. The appeal land is not designated for its biodiversity and geodiversity value nor is it identified as a site of local interest. CS policy CS10(4) is therefore plainly not applicable. The Statement of Common Ground made it clear that the site has no nature conservation interest and no consultee objected on this ground. No evidence or objective analysis whatsoever was brought forward to justify the objection on biodiversity grounds.
3. Reliance on CS policy CS3(8) was clearly misguided. This is a design policy and is about designing new development, not planning where development should go. There can be no objection to the outline application on design grounds. It is clear that the site can accommodate the protection and enhancement of such environmental assets that there are, and provide appropriate public open space. Reliance on LP policy HO3 was unreasonable. This was not mentioned in the reason for refusal but was advanced in evidence. The LP is out of date and inconsistent with the NPPF. Even if it had any weight at all this permissive policy would not be breached. The proposed development accords with all of the criteria in the policy.
4. The Council failed to acknowledge that there were any benefits arising from the proposed housing development despite there being less than five years housing land supply in the Borough and despite the acute shortage of affordable housing. Councillor Rose was clear that the Council ascribe no benefit whatsoever to the provision of either market or affordable housing.
5. A full award of costs is justified in this case or, alternatively, a partial award of costs arising from the 'biodiversity' aspect of the reason for refusal and the work related to refuting that element of the reason.

The Response by Stockton-on-Tees Borough Council

6. CS policy CS10(3) is, on its face, an environmental policy and the weight given to it is a matter of planning judgement. Members of the Planning Committee attributed weight to competing matters and gave greatest weight of all to this policy. Councillor Rose explained when pressed in cross-examination that his concern was for the hedgerows on the appeal land and his proof of evidence focussed on this matter. The EIA finds hedgerows to be important features of the land and it is a matter of fact that there is no illustrative master plan that indicates that hedgerows are to be retained in the development.

7. Councillor Rose is not an expert and Members have to decide matters as they find them. The key impacts are clear and as expressed by Councillor Rose. The development would result in the loss of 22.7 hectares of 'countryside' and would result in a loss of 'openness'. The use of such phrases reflects the fact that Councillor Rose is a lay person and it is not inappropriate for him to consider the proposed development to be a 'bridge too far'. The proposed development is a new proposal and would result in more houses and a loss of countryside without any mitigation for the loss of its biodiversity value.

8. It was not irrational for Councillor Rose to refer to the 'intrinsic character and beauty' of the appeal land because a core principle of the NPPF is the protection of countryside for that character and beauty. It was not unreasonable to refuse the application for three reasons and, though two of these fell away on submission of further information, the Council must reach a decision on the information presented to them. The application was accompanied by a Design and Access Statement which set out aspects of urban and building design. It was not therefore unreasonable to cite CS policy CS3(8) in the third reason for refusal of the application.

9. On the application for a partial award of costs, the Officer's report to the Planning Committee mentions CS policy CS10(4) and Natural England expressly pointed out in their representation that biodiversity of the appeal land should be considered. The EIA mentions that it would be essential to retain hedgerows on the land but the application plan simply shows a red line drawn around the perimeter of the land. The Council was rightly concerned that the development could result in the loss of hedgerows and therefore in harm to biodiversity. If the landscape is, indeed, dull, then retention of hedgerows is all the more important.

10. The Council has not acted unreasonably and neither a full or partial award of costs is justified.

Conclusions

11. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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.

12. The Low Lane development was found, by both the Inspector and the Secretary of State, to be within the green wedge. It was not unreasonable for the Council to therefore conclude that adjoining land was also in the green wedge. CS policy CS10(3) refers to green wedges and states that "...the separation between settlements...will be maintained through the protection and enhancement of the openness and amenity of green wedges within the conurbation...". That the

development would result in a loss of openness and amenity is a reasonable conclusion to reach and it follows that the development would, in the Council's opinion, be contrary to CS policy CS10(3). Though it was not mentioned in the surviving reason for refusal the Appellant referred in evidence to LP policy HO3 so it was reasonable for the Council to counter that evidence, by themselves referring to the policy in their evidence to the Inquiry.

13. CS policy CS10(4) relates, specifically, to 'designated sites' and to 'sites of local interest'. The appeal land is not a designated site and is not a site of local interest. The Council acted unreasonably, therefore, in citing CS policy 10(4) in the surviving reason for refusal and the Appellant has incurred unnecessary expense in refuting alleged conflict with the policy.

14. The Council has cited conflict with CS policy CS3(8) in the reason for refusal. Though this relates to the design of new development, rather than to the planning of new development, it does require new development to make a positive contribution to the local area, by protecting and enhancing important environmental assets and biodiversity, by responding positively to existing features of natural character such as hedges and trees, and by including the provision of high quality public open space. The Council has referred to this policy because they maintain that the development would result in the loss of hedgerows and therefore in harm to biodiversity.

15. The information before the Council at application stage included a Design and Access Statement. In Section 6.1 'Landscape strategy' it is stated that "Existing trees and vegetation will be retained wherever possible and this has strongly influenced the layout, design, orientation of housing units and the relationship and proximity of built form in relation to the Bassleton Beck...Vegetation to the boundary of Bassleton Beck has been substantially retained intact to protect existing wildlife and habitats...Existing vegetation has also been retained to mitigate any visual impact on adjoining land uses. In particular the existing hawthorn hedgerow located across the southern boundary of the site will be retained".

16. The information in the landscape strategy sends a clear message that the Appellant is seeking to protect and enhance important environmental assets and biodiversity by responding positively to existing features of natural character on the land such as trees and hedgerows, and there is no reason to suppose that the development would not include high quality public open space. The Design and Access Statement was part of the application and the development could have been tied to its provisions by imposition of a planning condition.

17. The Council acted unreasonably by not concluding that the protection and enhancement of important environment assets, such as hedgerows, is a matter that could be covered by imposition of a condition. Furthermore, Councillor Rose simply expressed the concern that hedgerows would be lost and that harm would thus be caused to biodiversity. This is a vague assertion, is contrary to commitments made in the Design and Access Statement, and is not supported by any objective analysis. The Council has failed to substantiate their claim, as stated in the reason for refusal, that "...the proposed development would have a negative impact on important environmental assets, biodiversity and the quality of the urban environment...".

Overall conclusion

18. The Council acted unreasonably by including in the reason for refusal the claim that "*...the proposed development would have a negative impact on important*

environmental assets, biodiversity and the quality of the urban environment..." because the matters to which this claim is made could have been covered by imposition of a condition, and because they have failed to substantiate the claim by submission of evidence. Reference to CS policies CS3(8) and CS10(4) in the reason for refusal was also unreasonable.

19. The Appellant has incurred unnecessary expense in refuting the aforesaid element of the reason for refusal and in refuting alleged conflict with CS policies CS3(8) and CS10(4). To this extent a partial award of costs is justified.

Recommendation

20. I recommend that the application for a partial award of costs be granted.

John Braithwaite

Inspector