The Planning Inspectorate

Costs Decision

Site visit made on 11 December 2014

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 5 March 2015

Costs application in relation to Appeal Ref: APP/H0738/A/14/2226575
Land off Busby Way, Mount Leven, Yarm, Stockton-on-Tees

- 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 Moore & McCluskey for a full award of costs against Stockton-on-Tees Borough Council.
- The appeal was against the refusal of planning permission for a residential development of 14 No. units.

Decision

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

Reasons

2. The Planning Practice Guidance 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely, and as the application, and response by the Council have been made in writing, I shall not repeat them in any great detail.

3. The applicant has highlighted that the Council has failed to provide evidence to substantiate their decision, and has relied instead upon inaccurate and vague generalised assertions about the proposal's impact. Furthermore, it is contended that the Council has delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations.

4. I have carefully considered the Council's position in respect of the impact of the proposed development on the green wedge between Ingleby Barwick and Yarm. I have been particularly mindful of the extent and coverage of the previous approval of planning permission for the Mount Leven scheme, the implementation of which the commencement of this proposal is reliant upon, and that it would already infill a significant part of the existing green wedge. In this respect, despite the previous approval, I accept that the Council were entitled to consider whether the proposals would further infill the green wedge and contribute towards the coalescence of the two settlements. Furthermore, I am satisfied by the Council's explanation of their assessment of the impact on the green wedge and the coalescence between the settlements, particularly

given the loss of openness on this relatively elevated and visible site, was a reasonable basis from which to reach a conclusion. Whilst ultimately I have concluded that the overall impact on the green wedge and the character and appearance of the area would not be so significant as to warrant the refusal of the development, I would conclude that the council has not acted unreasonably in its assessment of this matter.

5. I have also had regard to the contention that the Council should have acted consistently in its decision-making when assessing the appeal proposals in the context of the approved Mount Leven scheme. However, it is evident from the Council's relatively limited assessment that it has considered the appeal proposals on the basis of the cumulative impact of the additional development in conjunction with the approved Mount Leven scheme. I am not therefore persuaded that it has acted unreasonably in seeking to determine the appeal proposal in this manner.

6. The applicant has highlighted that the Council's conclusions in respect of the impact on the living conditions of existing residential occupiers in the vicinity of the appeal site have been unsubstantiated through the appeal process. Whilst the applicant has indicated that the decision taken was contrary to the views of professional officers, it is reasonably held that local planning authorities are not bound to accept the recommendations of officers or the advice or representations of consultees, as long as reasonable planning grounds are demonstrated and evidence provided to substantiate each reason for refusal. In respect of the impact on the living conditions of nearby occupiers, I acknowledge that this is a more subjective matter of judgement. However, it was incumbent of the Council to provide realistic and specific evidence about the impact of the proposed development, rather than the generalised assertions about the proposal's impact upon which it has relied in this instance. In this respect, I consider that the Council has acted unreasonably.

7. I have noted the applicant's submissions in respect of the timings and co-operation of the Council with regards the completion of the Section 106 legal agreement, and in particular that the Council failed to respond to requests for comments on the amended legal agreement. The applicant has provided a timeline in this respect as an appendix to the Application for Costs which has not been disputed by the Council, from which it is particularly evident that a delay occurred between 16 September & 18 November 2014. I have also been mindful that the appeal against the Council's decision was received on 1 October 2014, and that the deadline for receipts of final comments on the appeal for all parties was 1 December 2014. Furthermore, I note that the applicant, in the absence of comments from the Council, was ultimately compelled to complete a further Unilateral Undertaking in order to meet the appeal deadline for submissions, with the Council's comments on the amended legal agreement submitted in September 2014, not received until after the appeal deadline. Whilst I note that the Council has advised that it's legal team was not aware of the deadline for submissions to meet the targets set for the appeal process, I do not find this explanation or the apparent lack of response to the applicant's requests during the appeal process to amount to reasonable behaviour.

8. I have concluded that the Council has not acted unreasonably on issues related to its assessment of the proposed development in the context of the green wedge and the existing approved development. However, I have found that

the Council has acted unreasonably in failing to substantiate with supporting evidence and analysis its reason for refusal related to the impact on the living conditions of neighbouring occupiers, and has delayed progress on the completion of a Section 106 agreement. This has caused the applicant to incur unnecessary costs in pursuing the appeal, and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial 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 Stockton-on-Tees Borough Council shall pay to Moore & McCluskey the costs of the appeal proceedings, limited to those costs incurred in respect of addressing the second reason for refusal related to living conditions, and the delays associated with the preparation of the legal agreement and Unilateral Undertaking.

10. The applicant is now invited to submit to Stockton-on-Tees Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Seaton

INSPECTOR