The Planning Inspectorate

Costs Decision

Inquiry held on 21 to 22 April 2015
Site visit made on 20 April 2015

by R Schofield BA(Hons) MA MRTPI

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

Decision date: 17 June 2015

Costs application in relation to Appeal Ref: APP/H0738/A/14/2227047
Land at Little Maltby Farm, Low Lane, Ingleby Barwick TS17 0QR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, 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 with access from Low Lane, Ingleby Barwick.

Decision

1. The application for an award of costs is refused.

The submissions for Tiviot Way Investments Ltd

2. Submissions on behalf of the applicant were made in writing at the Inquiry and I shall not, therefore, repeat them in any detail. The essence of the application was that the Council prevented development that should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; and presented vague and generalised assertions above the appeal proposal's impacts.

3. Furthermore, in response to the Council's comments on the claim, the applicant noted that it was not made on the basis that the decision was taken by Members. The claim addresses the grounds of refusal, from wherever they come.

The response for Stockton-on-Tees Borough Council

4. The decision reached by Members was not unreasonable. They are not bound to accept Officer recommendations and made their decision on the basis of the background papers and past planning permissions.

5. Planning application 12/257/OUT was not a bare outline permission. It included the principle of land use disposition by reference to a master plan not expressed as illustrative. It gave a description of other matters that were reserved (e.g. layout), which can and did encompass a great majority of elements for future determination. The submitted plans can be consistently reconciled and there is no inconsistency in having the application document in the operative part and certain documents in a condition as the planning regime has different enforcement provisions. There is no issue that Members were correct as their reasons for refusal flow from that interpretation and assumption. This is not development that should clearly have been permitted.

6. There has not been a failure to produce evidence to substantiate the reasons for refusal. The planning permission situation has been explained along with the consequences that flow from it in relation to the first reason for refusal. The issue of perception has been explained by reference to the closer proximity of built development, in spite of an acceptance that technical standards could be met.

7. The principle of residential development has not been established. It is plainly not unreasonable where you have a planning permission that has been through a S73 process, and is relied upon as relevant, to properly, objectively analyse the start point for that premise. There have been no wasted costs. The points about time wasting need to be viewed through the prism of the planning courts, which require weight to be considered alongside the actual prospect of development soon coming forward. With respect, the applicant's application should be rejected as flawed.

The response for Tiviot Way Investments Ltd

Reasons

8. Paragraph 030 of the Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

9. Paragraph 049 of the Guidance states 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 a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations b) failing to produce evidence to substantiate each reason for refusal on appeal; and c) presenting vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

10. It is agreed by the parties that Elected Members are not bound to accept the recommendations of Officers and that this is not the basis of the costs application. I turn then to the substance of the reasons for refusal.

11. With regard to the first reason for refusal, reference is made to national and local policy, based upon a determination that residential development on the appeal site was not beneficial in the light of their view that a playing field use had been established. I have concluded in my decision that the scheme's harms do not outweigh its benefits, based upon the merits of the case and the evidence presented to me. However, whether the view of Members is legally correct or not, and thus unreasonable or not, in the light of the conditions attached to permissions 12/2517/OUT and 13/3077/VARY, is not for me to determine. Thus, notwithstanding the advice before them, Members did not act irrationally or unreasonably in reaching a different view to that of their Officers.

12. This approach does not appear to be consistent with regard to other applications around the appeal site, currently being considered by the Council, which do not seek to provide playing fields on the appeal site. However, these

have yet to be determined and there can be no absolute certainty that Members will not take the same approach.

13. I acknowledge that the wording of the reason for refusal was unclear. No substantive evidence was presented in support of the assertion that residential development on the appeal site would be to the detriment of the creation of an integrated and sustainable community. Rather, the focus was upon whether a playing field use had been established and the view that it could be lost. One can infer from the Council's case that this was Members' primary concern, but it is unhelpful, albeit not so unreasonable as warrant an award of costs, that this was not made clearer in the reason for refusal.

14. Turning to the second reason for refusal, it was quickly agreed by the Council that residential development on the appeal site could be designed so as to meet or exceed the separation distances required by its relevant adopted Supplementary Planning Document. However, this appeared to be as a result of drawings produced by the appellant for the appeal, which showed how dwellings could be laid out on the site. These were not before the Council at the time of determination and I do not consider it unreasonable for Members to reach a judgement that adverse impacts could arise.

15. With regard to the matter of perceived overlooking, this again is largely a matter of judgment. Thus, I am satisfied that, while the Council presented minimal evidence and did not put questions to the appellant's witness in cross examination, its position was not of itself unreasonable.

Conclusion

16. I find, therefore, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

R Schofield

INSPECTOR