



Costs Decision

Hearing held on 5 and 6 February 2019

Site visit made on 6 February 2019

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th April 2019

Costs application in relation to Appeal Ref: APP/U2370/W/18/3208981 Land off Garstang Road/new link road, Claughton-on-Brock PR3 0PZ

- 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 Mr Andrew Garnett (Beecham Developments Ltd) for a partial award of costs against Wyre Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 40 no. two, three and four bedroom dwellings.
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for a partial award of costs is made on three separate substantive grounds.

Highways

4. There were two putative reasons for refusal on highway matters. The first of these related to highway capacity. This was not a matter discussed at the hearing as, in the light of new evidence, the Council had confirmed they no longer proposed to pursue this reason for refusal.
5. The appellant has not suggested that the late withdrawal of this reason for refusal represents unreasonable behaviour but alleges that the Council acted unreasonably in not providing any evidence to substantiate the putative reason for refusal originally, and in particular the allegation that the proposal would have a severe impact.
6. I note the on-going concerns regarding transport capacity in the A6 Corridor and at Junction 1 of the M55. In the light of this the planning application was accompanied by a Transport Impact Note which indicated that the proposal would not have a detrimental impact on traffic generation as it would create fewer overall trips.

7. Whilst the Council does not agree with the appellant's conclusion in this matter, their own figures, utilising higher trip rates, only indicate 3 additional movements at the M55 Junction 1 at peak time. This could not reasonably support an objection on highway capacity grounds. However, their main concern in relation to capacity relates to the fact that they consider the reduction in employment provision on the site, that would result from the proposal, would increase the traffic generation from the housing development on the wider site. As such, they consider that if this site does not provide employment the opportunity for residents living elsewhere on the site to work locally would be reduced. Consequently, the amount of traffic movements at the motorway junction would be increased as a result of this as well.
8. Until the change in the Council's position, highway capacity was seen as a significant reason for refusing the proposal. However, the highways evidence was very limited, with no specific highways statement having been produced. No baseline data was provided regarding the capacity of the corridor/junction 1 and no evidence was provided to support the assertion that the reduction in employment on the site would result in a significant increase in traffic movements from the wider site.
9. No evidence was provided to explain how the scheme would impact on capacity, especially as the proposal would fall within the maximum amount of housing allowed by the outline application on the site, and this permission did not require any specific amount of employment land to be provided. Given this there could be no guarantee that any employment opportunities for local residents would actually be created on the site.
10. In failing to provide any detailed highway evidence to substantiate the putative reason for refusal regarding highway capacity, before this objection was withdrawn, I consider that the Council have acted unreasonably. This has resulted in unnecessary expense for the appellant in having to provide additional highways evidence at the appeal stage.
11. The second putative reason for refusal related to the access radii. The appellant alleges that the Council have provided no evidence to support their claim that the existing access with a 10m radius would encourage high speeds or require pedestrians to walk materially further. Furthermore, even if it was considered necessary to reduce the access to one with a 6m radius, this was a matter that could have been dealt with by condition.
12. Neither the Council nor the County Council made any response to the cost claim in this regard. As detailed in my decision letter I consider that the junction, as laid out, would be suitable for proposed development and would not be detrimental to highway or pedestrian safety. However, even it was considered necessary to reduce the size of the radii, this was a matter that could have been dealt with by a condition, and so the putative reason for refusal could have been avoided.
13. Whilst such a condition was not contained within the conditions agreed in the Statement of Common Ground, in subsequent discussions such a condition was provided by the Council. This indicates that they consider a condition that meets the tests set out within the *National Planning Policy Framework* (the Framework) would be capable of dealing with this matter.

14. Therefore, I consider this matter could easily have been avoided, and the Council acted unreasonably in making it a putative reason for refusal. Although it is clear that this formed a minor part of the appellant's submission, nonetheless the appellant incurred unnecessary costs in having to address this matter in the appeal process.
15. In conclusion, with regard to highways matters I consider that the Council acted unreasonably in not providing adequate evidence to support the putative reason for refusal, and in having a putative reason for refusal on a matter that could have been dealt with by condition. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and thus a partial award of costs on highway matters is justified.
16. The Council have suggested that in relation to highways matters the cost claim should be directed at Lancashire County Council who are a statutory consultee, and deal with highways matters on behalf of the borough council. Whilst I accept that costs awards can be made against statutory consultees, it is the responsibility of the local planning authority to consider the advice they receive from their consultees and determine whether the advice is valid and capable of being robustly defended. As such, there is no requirement for them to follow the advice they receive. To this end I note that they did in fact challenge the original response they received on highways matters – questioning whether it was consistent with the evidence given to the Local Plan examination. Thus, as they were ultimately responsible for the putative reasons for refusal, I consider that it is appropriate that they are responsible for this element of the costs claim.
17. My conclusion in this regard is supported by the fact that, although the County Council appeared at the hearing, they did so as part of the Council's team of witnesses. Moreover, there was no separate highways statement provided, other than a rebuttal to the costs application.

Policy SP13

18. Matters relating to Policy SP13 of the Wyre Borough Local Plan (adopted 1999) and the "tilted balance" argument did not form part of my consideration in the decision letter, as by the time the appeal was determined the Council had adopted the new Local Plan.
19. However, the appellant has argued that the Council's position was unreasonable not only because the settlement boundaries were out of date, but also because it is inconsistent with the approach taken in a recent appeal¹ where the Council conceded the boundaries were out of date. In any case, given the fact that the site already had outline permission for development, and was allocated for development in the then emerging Local Plan, it was unreasonable for the Council to state, in the first reason for refusal, that the development would result in an unacceptable encroachment into the countryside.
20. Given that until very late in the appeal process the previous Local Plan formed the development plan for the area, it was clearly appropriate for the Council to consider the proposal against this plan, and this policy in particular. In

¹ Appeal reference APP/U2370/W/17/3179744

addition, the Council stated that whilst previous appeals are capable of being a material consideration, in their view, the circumstances in the appeal mentioned by the appellant were significantly different to those which apply in this case.

21. Although the new Local Plan has now been adopted, this was not the case until after the hearing had taken place. Given this, as the appeal scheme was outside the settlement boundary and not for a use that is in principle acceptable under Policy SP13, it would have been necessary to discuss this policy, and the weight that should be given to it, at the hearing. Therefore, even if I were to have concluded that the Council had acted unreasonably in any of these regards, I consider that appellant's work in producing evidence on this matter does not represent a wasted expense. Thus, a partial award of costs in respect of this matter is not justified.

Green Infrastructure/ Housing Mix/ Noise

22. The putative reasons for refusal include some relating to the provision of green infrastructure, housing mix and the potential impact of noise on the living conditions of future occupiers. The reasons for refusal also indicate the policies in the development plan to which the Council consider the scheme would be contrary. These issues are proper planning considerations.
23. I note the contents of the email between the case officer and the appellant's agent dated the 9 August 2018, shortly before the appeal against non-determination was submitted. This email indicates that the case officer considered that, having worked with the appellant, the matters of concern had been narrowed down to the principle of the development and highways, dependent on the outcome of the revised highways consultation from the County Council on the latter. However, the views expressed in the email represent the informal views of an Officer, and this was not binding on the Council.
24. Given that these three additional issues represent proper planning concerns that needed to be addressed in determining the application, I do not consider the Council acted unreasonably in deciding that these represented additional grounds for opposing the appeal.
25. The appellant has highlighted that although the Council stated that the Officer's report was written and published in September, they were not made aware of it until the Council submitted their appeal statement in December. Nevertheless, given the appellant had not expected these to be reasons for refusal and so had not addressed these matters in the appeal statement, he was permitted to submit additional evidence on these matters, which were discussed fully at the hearing.
26. Although, the Council have stated that the Officer's report was published in September, I am unclear how or where it was published. However, it would appear they did not specifically make the appellant aware of its publication. This is unfortunate, and possibly unreasonable behaviour by the Council. Nevertheless, given I have considered that the Council did not act unreasonably in making these putative reasons for refusing the scheme, whilst the appellant's work in producing evidence on these matters had to be done later than would have been the case if they had known about the Officer's

report in September, this work would still have had to be done at some point in the appeal process.

27. Consequently, even if it were concluded that the Council had acted unreasonably in not informing the appellant of the Officer's report and the putative reasons for refusal, I consider that this has not given rise to extra expense by the appellant in dealing with the appeal. Therefore, I consider a partial award of costs in respect of this matter is not justified.

Costs Order

28. 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 Wyre Borough Council shall pay to Mr Andrew Garnett (Beecham Developments Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to highways; such costs to be assessed in the Senior Courts Costs Office if not agreed.
29. The applicant is now invited to submit to Wyre 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.

Alison Partington

INSPECTOR