



Costs Decision

Site visit made on 7 July 2020

by Edwin Maund BA (Hons) MSc Dip UP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2020

Costs application in relation to Appeal Ref: APP/F4410/W/20/3250776 Land Off Highfield Road, Askern, Doncaster

- 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 Esh Construction Ltd for a full award of costs against Doncaster Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 56 affordable houses, 12 retirement living bungalows and a multi-storey retirement living building accommodating 58 units.
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Decision

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

Reasons

2. The National Planning Practice Guidance (the NPPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council has exhibited unreasonable behaviour in the following respects;
 - Refusing planning permission for much needed affordable housing on a site allocated for residential development, contrary to the advice of their officers and failing to have regard for national or their own policies.
 - Failing to make clear why the development would adversely affect the character of the area or why it would impact on the poplar tree where their own tree specialist had raised no objection.
4. In response the Council advise that the impact on the character of the area and the impact on the tree are material planning considerations; it does not matter that the tree is not protected as implied by the appellant. The reasons for refusal are precise and valid and supported by the policies quoted in the reasons for refusal.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

6. In this case the site is allocated for housing in the development plan and proposes 100% affordable housing in an area of significant need. The Council had not prepared a master plan or other guidance on the appropriate design for the site but have nevertheless rejected the proposal on the basis of inappropriate design in respect of density and the provision of a three storey block.
7. The National Planning Policy Framework (the Framework) makes clear at paragraph 130 that *'where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.'* The Council have not sought to rely on any local design standards or style guides to justify its stance, nor is there evidence within the Officer report to Committee of any concerns in this respect.
8. Where Members disagree with their Officers as they are entitled to do, they are duty bound to make it clear why they have disagreed and present evidence explaining the reasoning. By refusing permission on this basis the Council have failed to explain what material harm would occur or how the scheme would be clearly in conflict with the adopted policies.
9. With regard to the second reason for refusal. The proposal had been amended to revise the layout to address the concerns that the Council's Tree Officer had identified and this was duly reported to the Committee. The Appellant's arboricultural report made clear that in undertaking construction outside of the root protection area, the tree could be retained. No contrary evidence has been presented that the effect on the Poplar Tree could not be managed in this way.
10. The Council in presenting its case sought to indicate that the tree would be threatened in the future due to pressure from future residents because of the proximity of the tree. This case is weakened by the lack of a tree preservation order, no reference to seeking the removal of permitted development rights in the gardens affected, or, the reason for refusal having any reference to the future living conditions of those residents that the Council infers would seek to have the tree removed.
11. No technical evidence from a tree specialist has been presented that supports the assertion that the construction of the development could not be achieved and the tree be retained.
12. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the NPPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in NPPG, has been demonstrated and that an award of costs is justified.

Costs Order

14. 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 Doncaster Metropolitan Borough Council shall pay to Esh Construction Ltd. the costs of the appeal proceedings described in the heading of this decision.

15. The applicant is now invited to submit to Doncaster Metropolitan 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.

Edwin Maund

INSPECTOR