
Costs Decision

Inquiry held on 6 November 2014

Site visit made on 14 November 2014

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 12 January 2015

Costs application in relation to Appeal Ref: APP/P3420/A/14/2218530/ Land at Baldwin's Gate farm, Baldwin's Gate, Newcastle-under-Lyme, Staffs, ST5 5ES

- 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 Richborough Estates Ltd for a partial award of costs against Newcastle-Under-Lyme Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 113 no.dwellings and associated works.

Summary of Decision: The application is allowed.

The submissions for the appellants

1. The costs application is made because of the Council's unreasonable behaviour with regard to i. the issue of the 5 year housing land supply and ii. the matter of density.
2. The Council has long held the formal position that it cannot demonstrate a 5 year supply of housing land. That was its position in both the April 2013 and 2014 annual monitoring reports. In relation to the present appeal, it signed a Statement of Common Ground (SOCG) to that effect on 15 August 2014. However, 2 days before the due date for the exchange of proofs, it resiled from that position. This change of position required the appellants to engage in additional work to address the issue. Moreover, the Council did not provide information on the sites it was now relying upon until the opening day of the inquiry. This required further research to be carried out during the inquiry.
3. Furthermore, the Council, via its external planning consultant, Mr Bridgwood, was advancing a position at the inquiry that was not its own formal position and which it was not following in determining other planning applications in the Borough.
4. The substance of the Council's case was so weak that it could not possibly have been accepted by any reasonable decision-maker. For example, on the buffer, which on its own disposes of this matter, Mr Bridgwood could find no precedent for his contention that persistent failure to meet the supply over many years could be cured by the last 2 years. The introduction of commitments into the supply from outside the monitoring period has been condemned time and again by Inspectors at appeal.
5. The reason for refusal on density was based on harm to the character of the existing village. Yet no evidence on urban design was submitted by the

Council. It simply stated the fact that the density would be higher than at present without demonstrating why it would be harmful. Time and again, Inspectors have said that there is no need for new development to replicate existing development and the Council's own urban design guide states that density is a crude measure of character. If it wished to advance this reason for refusal, the Council should have called an expert witness on urban design. The appellants were put to the unnecessary expense of calling their own expert witness.

The response by the Council

6. On the 5 year supply, the appellants were notified by Mr Bridgwood as soon as the revised position became clear. In his 6 October e-mail, he indicated his view that the housing land supply may be better than anticipated and that he may wish to amend the SOCG. This did not give rise to extra expense as, irrespective of when the appellants were notified of this change of position, they would have incurred the same expense.
7. The appellants submitted that the Council were unable to demonstrate a 5 year supply in the absence of knowing the full, objectively assessed need (FOAN). If that was correct, there was no purpose in the appellants' engaging in work to assess the FOAN. The appellants conceded that the starting point for assessing the supply must be the requirement as set out in the development plan.
8. Turning to the issue of which buffer to apply, the evidence on supply was clear and it was a matter of interpretation as to whether to apply 5% or 20%; there was no clear authority on either party's position.
9. On the inclusion of data following the April 2014 base date, there was no evidence that this matter had been raised in the cases quoted by the appellants.
10. On the question of density, this was an outline application with all matters apart from access being reserved for later submission. Therefore density was the only means available to the Council by which to assess the impact of the proposal on the form and character of the village. Other Inspectors have used density as a means of assessing schemes and Mr King provided suitable evidence in chief and in cross examination.

Reasons

11. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
12. The PPG refers on procedural matters to "introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would otherwise not have arisen."
13. In this case, the Council had agreed a SOCG with the appellants on 15 August 2014 in which the question of housing land supply was expressly addressed, with reference to the April 2014 Annual Assessment. The Council accepted that

- the appropriate buffer to apply was 20% and that it could not demonstrate a 5 year supply of housing land.
14. Had that position remained the case at the inquiry, the appellants would not have needed to address that matter any further. However, the Council's external planning witness, Mr Bridgwood, contacted the appellants 2 days prior to the date for the exchange of proofs indicating that he would be arguing a different position at the inquiry. Curiously, the position promoted by Mr Bridgwood was not supported by any Council publication or internal report. Moreover, it did not even appear to be the formal position of the Council, as the appellants produced evidence at the inquiry to show that the Council was still producing reports to its planning committee on the basis of the position set out in the SOCG. The case promoted by Mr Bridgwood at the inquiry relied upon his own re-appraisal of housing sites in which he came to a conclusion on deliverability which differed from that of the Council in its April 2014 Annual Assessment. He differed from the Council on the use of the 20% buffer. He also 'retro-fitted' to the April 2014 Assessment, sites which had obtained planning permission since April 2014.
 15. It is a matter for the Council as to what evidence it puts forward at the inquiry. However, the process undertaken appeared to be very much 'on the hoof' and lacking in transparency; there was little evidence of consultation with relevant interested parties (possibly including the Council's own officers) on the developability of the various re-assessed sites. There appeared to be little respectable basis for the adoption of a 5% buffer, a stance somewhat in conflict with a number of appeal decisions produced at the inquiry. The use of hindsight to alter the April 2014 assessment appears at best a questionable approach.
 16. This late introduction of fresh and substantial evidence required the appellants to address the matter of housing land supply and to produce a rebuttal proof. Furthermore, it appears that the full list of sites relied upon by Mr Bridgwood was not supplied to the appellants until the first day of the inquiry, requiring additional research to be undertaken during the course of the inquiry.
 17. The Council questioned the need for the appellants to consider the FOAN. Whilst this is principally a matter to be the subject of a development plan examination, it is not an irrelevant consideration in the context of a S.78 appeal where the adequacy of the housing land supply is at issue.
 18. On the question of density, the reason for refusal relates to the impact on the character of the village. However, the Council made little attempt to assess the existing character as a starting point from which to evaluate the impact. The evidence said little more than that the proposed density would differ from the existing densities which were set out in the appellants' Design and Access Statement. Yet the appellants produced ample illustrative matter in this Statement upon which an assessment of character impact could be based. Indeed, the appellants consulted MADE, an independent design review panel based in Birmingham, and their comments were incorporated into the Design and Access Statement. To my mind, the Council failed to provide a respectable basis to justify this reason for refusal.
 19. In conclusion, I consider that the Council behaved unreasonably on the matters set out above, thereby causing the appellants to incur additional expense.

Formal Decision

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

Costs Order

21. 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 Newcastle-under-Lyme Borough Council shall pay to Richborough Estates Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the matters of the 5 year housing land supply and of the impact of density on the character of the village.
22. The applicants are now invited to submit to Newcastle-under-Lyme Borough Council, to whom a copy of this decision has been sent, details of these 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.

B.S. Rogers

Inspector