



Costs Decision

Site visit made on 6 and 7 December 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2022

Costs application in relation to Appeal Ref: APP/Y2430/W/20/3264051 Kirby Lane, Melton

Easting: 474099, Northing: 317473

- 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 Barratt David Wilson Homes for a full award of costs against Melton Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a Reserved Matters application for 233 dwellings (Phase 1), with respect to applications with references 17/00717/VAC and 15/00910/OUT, and in connection with matters of Appearance, Landscaping, Layout, and Scale including public open space, drainage and associated infrastructure.
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Decision

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

The submissions for Barratt David Wilson Homes

2. The appellant refers to the extensive design discussions undertaken in connection with the proposal. The appellant claims that design discussions became excessive and contradictory. It is therefore claimed that the Council acted unreasonably, with its officers finding the scheme acceptable and the Planning Committee refusing the scheme on unsubstantiated design grounds. The appellant explains this has led to delay in delivering housing on a strategic site and cost to the appellant in employing expert witnesses.

The response by Melton Borough Council

3. Whereas the Council asserts it gave consistent and considered advice throughout the planning consideration process. It states it gave the appellant ample opportunity for its reservations to be addressed. It also states that the reason for refusal was not unsubstantiated and the Council's concerns would be fully addressed in its Statement of Case and at the hearing.

Background

4. The scheme was reported to Planning Committee on three occasions. On the first occasion, November 2019, officers recommended the scheme be refused on design grounds. However, instead Planning Committee deferred the scheme to allow design improvements to be made. The minutes reflect that a broad range of objectives required satisfaction. These included for the scheme to function well, to be visually attractive, be sympathetic to local character, create a strong sense of place and represent sustainable development.

5. Following a series of meetings with officers, in November and December 2019, amended plans were submitted with a reduced scheme for 236 dwellings. When reported back to Committee a second time, the proposal was recommended for approval. However, despite being found to be “vastly improved” it was nevertheless again deferred. Members sought improvements with respect to parking configuration, to review the density of built form, introduce more greenery and more spaciousness and to provide a more dispersed distribution of affordable housing.
6. Further meetings took place between the appellant, officers and the Chair and vice Chair of Planning Committee in March 2020 and included design workshops. Amended plans were submitted in August 2020, for a further reduced scheme of 233 dwellings. This version is the one the subject of this appeal.

Reasons

7. The Planning Practice Guidance (PPG) 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. A Council could be vulnerable to costs being awarded against it if it prevents or delays development that should clearly be permitted and by not determining similar cases in a similar manner.
8. The report presented to Planning Committee in October 2020, whilst recommending approval, flagged a series of issues that were considered to be borderline. The minutes reflect that Members remained concerned that the scheme had insufficient green areas and still raised parking concerns. The Council explained at the hearing that the changes made had not gone far enough. However, the Committee also raised new issues including that the scheme met only minimum standards, that not all small roads would be adopted, the design was “poor” with small houses and the road network would be unsafe for children crossing to gain access to Kirby Fields Park.
9. Notwithstanding the advice of professional officers, Council Members were entitled to raise design concerns, particularly as similar concerns had been raised the previous two times the scheme was reported to Committee. The requirement for more greenery and improved parking arrangements were consistent with concerns raised in February. However, the new issues raised, including the Council’s request for a reduced density, an increase in the size of dwellings, a greater extent of green areas and a revised road network suggest to me that a fundamental redesign may have been necessary. The requirement for these changes, after an already protracted design process, would have been in contradiction of the design principles of the outline’s Design and Access Statement and the progress made by the appellant in responding to previous advice. Accordingly, the path of the decision-making process had become somewhat muddled, disjointed and inconsistent.
10. Furthermore, at the hearing the Council identified three key areas of concern. These related to the insufficient provision of public open space, poor linkages to the park and the scheme’s reliance on tandem and triple length driveways. However, the established design principles of the outline approval indicated that the proposal would not include substantial areas of open space. As such it is unreasonable to expect an increase in provision at this stage. Also, it was undisputed at the hearing that phase two and the approved scheme for 199

dwelling also included tandem driveways. This therefore illustrates the Council's inconsistent approach in its consideration of parking provision with regard to similar schemes and within the same policy context. I also found in my main decision, that the linkages into the park would be appropriate for future occupiers of the development. It was therefore unreasonable and unnecessary for the Council to require an enhanced access arrangement to the park. Therefore, the Council's continuing objection to these matters indicates an inconsistent approach to this and consented proposals, as well as a general disregard for the Development Framework within the outline approval.

11. I appreciate that the Council has attempted to work proactively to attempt to resolve the design concerns. Nevertheless, there is sometimes a fine line between on the one hand seeking to facilitate a high standard of development and on the other maintaining unreasonable expectations. In this case, I have found the Council's conduct overall to have frustrated the process.

Conclusion

12. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. Consequently, an award of costs, to cover the expense incurred by the appellant in preparing and submitting an appeal against the reason for refusal is justified.

Costs Order

13. In the 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 Melton Borough Council shall pay to Barratt David Wilson Homes, the full cost of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Court Costs Office if not agreed.
14. The applicant is now invited to submit to Melton 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.

B Plenty

INSPECTOR