

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

CIRCULAR 03/2009 FROM THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT ENTITLED 'COST AWARDS IN APPEALS AND OTHER PLANNING PROCEEDINGS'

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To advise the committee of the details of Circular 03/2009 relating to the award of costs in planning appeals. The costs awards regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process.
- 1.2 To report to the Planning Committee the outcome of a recent planning appeal decision at 59 West Street, Winterton in respect of the construction of 14 new dwellings with associated access and parking (PA/2008/0365) which has been allowed on appeal and where costs have been awarded against the local authority taking into account the provisions of the costs circular.

2. BACKGROUND INFORMATION

- 2.1 In April this year the Department for Communities and Local Government issued Circular 03/2009 to give updated guidance on the award of costs in England in proceedings carried out under the Planning Acts. The guidance within the circular applies to all appeals lodged under the Town and Country Planning system within England made on or after 6 April 2009. The circular replaces Department of the Environment Circular 8/93 entitled 'Awards of costs incurred in planning and other proceedings'.
- 2.2 As the circular points out, the appeal process (which is administered by the Planning Inspectorate from its Bristol office) is an integral part of the Town and Country Planning system within England. It provides for the resolution of disputes arising from decisions taken at a local level and ensures that decisions about the use and development of land are consistent with up-to-date national, regional and local planning policies.
- 2.3 The main reason behind the costs regime has been in order to ensure that, as far as possible, all parties act and behave in an acceptable and

reasonable way when determining applications which have gone to appeal. In particular the circular makes the following points:

- All those involved in the appeal process should behave in an acceptable way and should be encouraged to follow good practice, whether in terms of timeliness or in quality of case.
- Appeals should not be entered into lightly or as a first resort but should be considered as the last available option.
- Planning authorities should properly exercise their development control responsibilities and should rely only on reasons for refusal which can stand up to scrutiny and do not add to development costs through unavoidable delay or refusal without good reason.
- All those involved in the appeal process, who feel justified in complaining about the others' behaviour, use the guidance in the circular effectively by pursuing substantiated applications for costs in a robust but realistic way.

2.4 In planning appeals all parties involved in the process, ie local planning authority, appellant and any third parties, would normally be required to meet their own expenses. In most appeals no application for costs is made because clearly all parties involved accept that the reasons for refusal need to be properly investigated and determined upon and that counter-evidence needs to be properly assessed by an independent inspector appointed by the Planning Inspectorate. In recent years, however, there has been a steady increase in the number of claims for costs where one party or another involved in the process has acted unreasonably, has failed to substantiate reasons for refusal or put together a cogent, realistic argument as to why development should be allowed to proceed contrary to national, regional and local planning policy. The Planning Inspectorate has stated that applications for costs are made in about 20% of appeals which have gone to a local informal hearing, 25% in public local inquiries and 4% of written representations. Of these applications for costs, some 40% have been granted. It can be seen, therefore, that in a high percentage of cases where costs have been claimed the planning inspector appointed to determine that appeal has granted the award.

2.5 It should be noted that an award of costs does not necessarily follow the outcome of the appeal. For example, the local authority may well win an appeal but merely because the appeal has been dismissed does not provide the basis for a legitimate claim of costs by the local authority. Likewise, merely because an appellant may win an appeal against the local authority decision it does not automatically follow that the local authority will be awarded a costs claim against it. The test as to whether an award of costs is reasonable or not is set out in paragraph A12 of the circular and consists of the following three elements:

- a party has made a timely application for an award of costs
- the party against whom the award is sought has acted unreasonably
- the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process

2.6 It is possible within the costs system for the local authority to win the appeal but still have a partial award of costs made against it for unreasonable behaviour. In particular it is important that the local planning authority, in refusing planning permission, clearly identifies exactly the reasons for refusal and, most importantly, is then capable of defending those reasons for refusal at the subsequent appeal. It is possible, for example, where a number of reasons for refusal have been put forward, that little or no evidence to substantiate one or more of those conditions is put forward at the inquiry or the hearing. In those cases the planning inspector could award partial costs on the basis that not all the reasons for refusal have been properly and robustly defended with appropriate evidence to support them.

2.7 In all planning appeal cases, therefore, it is important that the local authority is careful in deciding what the basis for refusal is and that reasons for refusal that cannot be substantiated or robustly defended are avoided. It is far better to refuse an application for one strong ground rather than add additional supplementary reasons which cannot be defended. Furthermore, of course, each reason for refusal must be based on adopted planning policy grounds or other material planning considerations. Any reason for refusal which is not considered to be a material planning consideration will be struck off by the appointed inspector and would be likely to be subject to an award of costs.

2.8 The circular sets out at paragraphs A22 and A23 what is meant by 'unreasonable'. It cites the most common example of 'unreasonable' concerns non-compliance with procedural requirements by one party or another or the failure by the local planning authority to substantiate a stated reason for refusal of planning permission. Where a party has indicated an intention to apply for costs, and has set out the basis for that claim, the claim will be strengthened if the opposing party is unable to explain why the relevant facts or matters referred to have not led to a change of stance or position.

2.9 An award of costs following an appeal against a planning decision can only be claimed for costs necessarily and reasonably incurred for the appeal process itself. Any costs incurred by any party that are unrelated to the appeal itself are not eligible. Therefore normal costs incurred in preparing and submitting the application for determination would not be subject to an award of costs.

- 2.10 The circular also sets out suggestions for good practice in order to minimise the risks of a costs award. In particular the circular highlights that there should be constructive co-operation and dialogue between all parties at all stages and there is a need to maintain good records and have an audit trail of negotiation, dialogue and information exchanges. Parties should be willing also to accept the possibility that a view taken in the past can no longer be supported and act accordingly at the earliest opportunity, even at the risk of an application for costs being made, for example an appeal or reason for refusal is withdrawn at an early stage.
- 2.11 In the context of Circular 03/2009 I need to draw to the attention of the committee a recent planning appeal decision in respect of a housing development site at West Street, Winterton (application number PA/2008/0364). The appeal, submitted by Keigar Homes Limited, was against the refusal of planning permission by North Lincolnshire Council on 7 January 2009. The application had been recommended for approval but members, following a site visit, decided to refuse the application because it was considered that the density would be out of character with the surrounding area, and the development would not enhance or preserve the character of the conservation area and would have an effect on highway safety within the area.
- 2.12 The inspector, in allowing the appeal by decision letter 9 September 2009 (see Appendix 1, paragraph 25), concluded that ‘the density of development would not harm the character and appearance of the surrounding area and settlement, that the form of the development would preserve the character and appearance of the Winterton conservation area, and that the proposals would not harm highway safety’. In allowing the appeal the inspector then imposed a number of conditions restricting the development. At the same time the inspector also issued a decision relating to a costs claim put forward by the appellants. In his detailed report on the costs claim the inspector (paragraph 13) confirmed that ‘irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily’. Furthermore, the inspector confirmed that applications can quite reasonably be refused by the Planning Committee contrary to officer advice provided members have reasonable planning grounds for taking the decision and are able to produce relevant evidence to support their decision in all respects. The inspector concluded that the council should have produced evidence to substantiate each reason of refusal by reference to the development plan and other material considerations.
- 2.13 In this particular case the inspector concluded (paragraph 18) that the council relied on hearsay evidence from residents and local councillors and did not substantiate, in accordance with the provisions of paragraph B22 of the circular through evidence, the extent of any harm that could arise. Whilst planning authorities should consider the views

of local residents when determining a planning application, 'the extent of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial planning evidence. Planning authorities will be at risk of an award of costs for unsubstantiated objections where they include valid reasons for refusal but rely almost exclusively on local opposition from third parties through representations and attendance at an inquiry or hearing to support the decision. This decision of the inspector confirms the view held in previous cases that merely because local residents object to an application, possibly in significant numbers, is not in itself a justified reason for refusal.

3. OPTIONS FOR CONSIDERATION

- 3.1 That the contents of Circular 03/2009 be noted in respect of the likely award of costs where the local authority has acted unreasonably or has been unable to produce evidence to robustly defend reasons for refusal on planning decisions.
- 3.2 That the decision of the inspector to allow the appeal at West Street, Winterton for the construction of 14 new dwelling houses be noted and that the reasons behind the award of costs be noted. Furthermore, it is important to show clearly why the development cannot be permitted and that any such decision should be based on national, regional and local planning policies and any other material planning considerations only.
- 3.3 As this report is of a factual nature, in that it is drawing members' attention to the provisions of a Government circular and a planning decision, there are no options as such. The decisions and the existence of the circular should be noted.

4. ANALYSIS OF OPTIONS

- 4.1 Not applicable.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

5.1.1 From a development control perspective, it is important that all planning decisions and individual reasons for refusal are fully substantiated and are in accordance with regional, national and local planning policies and guidance. Failure to ensure that reasons for refusal are in accordance with such policy will lead to the likely submission of a costs claim and award at any subsequent planning appeal.

5.1.2 Furthermore, any individual reason for refusal must be substantiated and robustly defended in accordance with the

provisions of Circular 03/2009 with evidence to support that decision. Reasons which cannot be supported with evidence but which are based on hearsay, speculation or only anecdotal evidence will not be supported and could be subject to a claim and award of costs.

5.1.3 An award of costs, particularly in relation to a local hearing and even more so, a public local inquiry, could be substantial amounts of money. The provision of legal representation and preparation and giving of evidence by specialist professionals can be an expensive and time-consuming part of the appeal process. Significant claims for costs can be expected in such circumstances. The development control planning budget has an amount of money to defend council appeals but is set at a level whereby it only covers for meeting the council's own costs in defending such appeals. There is no provision in budget to pay for significant awards of costs given by inspectors against the authority by third parties or appellants.

5.2 Staffing

5.2.1 The lodging and subsequent defending of an appeal made against a decision of the local planning authority is extremely time-consuming and resource-intensive as far as staffing is concerned. The need to produce statements, evidence and documentation at all the appropriate stages of the appeal process can place a significant strain on the development control team as it means officers being deflected away from processing new applications received by the authority.

5.3 Property

5.3.1 There are no property implications.

5.4 IT

5.4.1 The provision and maintenance of a good planning database and IT system is critical to meeting targets required by Government in relation to the processing of planning appeals together with the preparation and publication of appropriate documentation.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

6.1.1 The application for an award of costs in a planning appeal can be made under the provisions of the Town and Country Planning Act 1990 and the Local Government Act 1972.

6.2 **Environmental**

6.2.1 None.

6.3 **Diversity**

6.3.1 None.

6.4 **Section 17 – Crime and Disorder**

6.4.1 None.

6.5 **Risk**

6.5.1 As identified in paragraph 5.1, there is a significant risk to the authority that failure to comply with the provisions of Circular 03/2009 will result in financial penalties being incurred by the local planning authority.

6.6 **Other**

6.6.1 None.

7. OUTCOMES OF CONSULTATION

7.1 Consultations have been carried out with legal services and financial services on the contents of this report and comments made by them have been incorporated into this report where appropriate.

8. RECOMMENDATIONS

8.1 That the contents of this report and the award of costs by the inspector in respect of the planning refusal at 59 West Street, Winterton be noted.

HEAD OF PLANNING

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SCUNTHORPE
North Lincolnshire
DN15 6XQ
Author: Mike Welton
Date: 23 September 2009

Background Papers used in the preparation of this report

Circular 03/2009 entitled 'Costs Awards in Appeals and Other Planning Proceedings' dated 6 April 2009

Appeal decision letter dated 9 September 2009 in respect of the construction of 14 new dwellings with access and parking etc at 59 West Street, Winterton under planning application number PA/2008/0364

Award of costs letter dated 9 September 2009 in respect of the same appeal



Appeal Decisions

Hearing held on 26 August 2009
Site visit made on 26 August 2009

by **Andrew Jeyes** BSc DipTP MRTPI

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

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Decision date:
9 September 2009

Appeal A: APP/Y2003/A/09/2102072

59 West Street, Winterton, North Lincolnshire DN15 9QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Keigar Homes Ltd against the decision of North Lincolnshire Council.
- The application Ref PA/2008/0364, dated 7 March 2008, was refused by notice dated 7 January 2009.
- The development proposed is erection of 14 new dwelling houses with associated garaging and parking and formation of new access road.

Appeal B: APP/Y2003/E/09/2102076

59 West Street, Winterton, North Lincolnshire DN15 9QG

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Keigar Homes Ltd against the decision of North Lincolnshire Council.
- The application Ref PA/2008/0365, dated 7 March 2008, was refused by notice dated 7 January 2009.
- The demolition proposed is of the existing dwelling and outbuilding.

Application for costs

1. At the Hearing, an application for costs was made by Keigar Homes Ltd against North Lincolnshire Council. This application is the subject of a separate Decision.

Decision: Appeal A

2. I allow the appeal, and grant planning permission for the erection of 14 new dwelling houses with associated garaging and parking and formation of new access road at 59 West Street, Winterton, North Lincolnshire DN15 9QG in accordance with the terms of the application, Ref PA/2008/0364, dated 7 March 2008, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Decision: Appeal B

3. I allow the appeal, and grant conservation area consent for the demolition of the existing dwelling and outbuilding at 59 West Street, Winterton, North Lincolnshire DN15 9QG in accordance with the terms of the application Ref PA/2008/0365, dated 7 March 2008, and the plans submitted with it, subject to the condition that the works of demolition hereby authorised shall not be carried out before the commencement of development on the associated planning permission for the provision of 14 dwellings on the site.
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Procedural Matter

4. The original proposal submitted to the Council related to 13 dwellings, but during consideration, this was amended to 14 dwellings. I have therefore amended the description of the development to reflect the application determined by the Council.

Main Issues

5. I consider the main issues to be, in respect of Appeal A:-
 - i] the effect of the proposed density of development on the character and appearance of the surrounding area and settlement;
 - ii] whether the form of the development would enhance or preserve the character or appearance of the Winterton Conservation Area;
 - iii] the effect on highway safety; and,in respect of appeal B:-
 - iv] whether the proposal meets the aims of saved Policy HE3 of the North Lincolnshire Local Plan 2003 [LP] in respect of demolition in conservation areas.

Reasons

Background

6. The majority of the site, including the West Street frontage, is located within the Winterton Conservation Area, with a narrow strip along the western side falling outside. The applications were recommended for approval by officers but were refused by the relevant Council committee. The Council has no objection to the principle of residential use of the site.

Character and Appearance

7. The overall character of the conservation area is of a tight urban centre with looser frontage development along radiating roads. The western end of West Street, which contains the site, has a very loose grain with a number of detached buildings and limited views into rear garden areas lying between West Street and High Street to the south. No 59 is an undistinguished post-war detached bungalow with an adjoining chalet bungalow at No 61. To the east is an area of open space containing a playground that connects West Street and High Street. The open space has a wall fronting West Street with a row of horse chestnut trees behind and a conifer screen to the side of the site. Beyond the conservation area, there is a general suburban character to this part of Winterton at a variety of densities.
8. The proposal is to demolish No 59 and erect three estate style cottages on the frontage with an access road to the west serving a further 11 dwellings to the rear. These dwellings would be arranged in two small terraces, a pair of semi-detached houses and two detached bungalows adjoining the rear gardens of bungalows facing Northlands Road South. The access would replace the two existing separate driveways serving No's 59 and 61.
9. The Council consider that the density of development proposed, at around 54 dwellings per hectare [dph], to be excessive and not to respect the character of the surrounding area or of the settlement. Saved LP Policy H9 indicates that in Winterton, the density should be compatible with that of the settlement with a minimum density of 30 dph unless there are over-riding reasons relating to the

character of the surrounding built environment. This policy reflects guidance within Planning Policy Statement 3: *Housing*.

10. Whilst the density proposed is significantly higher than that of the surrounding area, there are other small developments within the town at high density, including a new development on West Street close to the centre of the town. However, the Council are concerned that the proposed density could only be achieved by the use of backland or in-depth development that would require building on back garden areas that are considered to form part of the character of the area. The Winterton Conservation Area Supplementary Planning Guidance [SPG], adopted in 2005 following public consultation and therefore having significant weight, indicates that the space between buildings is an important part of the area's historic character, particularly apparent in the large urban gardens and remaining former farmyards. It further states that new housing should conform to traditional building lines that are at or close to the edge of pavement.
11. The existing rear garden areas of the site are largely hidden from public view, with the main view down the driveway of No 61, although they also form an aspect of the outlook of adjoining dwellings. These gardens are mainly related to more modern properties and appear to me, to be divorced from the older historic pattern of rear spaces by the large rectilinear public open space between West Street and High Street. The proposed frontage cottages would be sited close to the road and would be of an appropriate design that would improve the appearance of the conservation area.
12. The development behind the proposed West Street cottages would have little impact on the surrounds, being visible only in direct views down the proposed access drive and in very limited views of the upper parts of the houses from High Street and the adjoining public open space. In views down the access drive from West Street, the proposed houses would be close to the access drive reflecting local character. The exception to this would be the terrace at the end, which would be set back behind a parking area but close to the paved surface and the two bungalows at the head of the cul-de-sac, which are largely outside of the conservation area. There would be limited views of the upper elements of the dwellings from the end of Earls Gate Road looking towards the conservation area, but these would be seen in the context of the properties fronting Northlands Road South and the gable ends and roofscape of High Street.
13. The Council in their written submissions also raised concerns relating to the design of the frontage cottages, although this was not part of the reasons of refusal of the application. These concerns were withdrawn at the Hearing.
14. In my view, the proposed development would not harm the pattern of development within the conservation area and, because of limited visibility, it would not give rise to domination of the street scene by the proposed cul-de-sac and its groups of houses. I do not therefore consider that the proposal would conflict with the guidance in SPG. Nor do I consider that this proposal would create a precedent for similar development elsewhere along West Street.
15. I therefore conclude that the proposed density of development would not harm the character and appearance of the surrounding area and settlement and that the form of the development would preserve the character and appearance of the Winterton Conservation Area. The proposal would comply with saved LP Policy H9 and saved LP Policies H7 and HE2, which aim to ensure that backland development would not affect the general quality and character of the area and that

development should preserve or enhance the character and appearance of the conservation area.

Highway Safety

16. West Street is a 'B' classified road passing through the town with a carriageway width of some 6.5 metres and footways to each side. It is generally wider than other roads within the conservation area. West Street has a junction with Northlands Road South to the west of the site where the 'B' road has a 90^o bend. A survey carried out by the appellant indicates that the 85-percentile speed of traffic at the site was within the 30 mph speed limit. The Council accept that the proposal complies with their published technical guidance and with guidance in Manual for Streets in relation to the proposed junction, but consider that locally expressed concerns over-ride such considerations.
17. West Street has an infant's school with around 200 children on roll some 200 metres to the east of the site, with a school crossing patrol outside to enable children to cross West Street. A junior school lies further to the east along West Street. There is also a pedestrian way to connect to an adjoining estate to provide a route to the more distant secondary school.
18. Local residents and councillors pointed to extensive parking problems along West Street at school opening and closing times and on match days at the local football club, but the Council had no evidence to support these observations. The appellant produced evidence from two days of observation showing that parking tended to take place on the northern side of West Street, with the worst case being at school leaving time on a day of poor weather. On this day, parking on the northern side of West Street extended from the infants school as far as the open space, with a lesser extent on the southern side. No pedestrian counts of people crossing the site frontage had been carried out, although it is accepted that children and parents use the footway as one means of gaining access to the school.
19. Parking undoubtedly occurs in relation to school trips at limited times each school day. I also accept that, on occasions, parking could extend along West Street as far as the site. However, the proposed access, which would replace the existing two single access points, would make little difference to the overall amount of parking available. I also consider that the amount of traffic generation arising from the additional housing on the site would be low and would not make a discernible difference to pedestrians crossing the proposed access or to traffic flows along West Street.
20. Residents have additionally commented that inadequate parking would be available within the site to cater for residents and their visitors leading to additional parking on West Street. The proposals provide 24 off-street parking spaces for the proposed 14 dwellings with an additional area that could contain four cars for visitor parking. The Council indicate that this would comply with their standards. In my view, this is an adequate level of parking to cater for everyday use.
21. I therefore conclude that the proposed scheme would not harm highway safety. It would comply with saved LP Policy H5[f], which aims to ensure that new developments have an adequate and appropriately designed access that will not create any traffic or road safety hazard.

Demolition

22. In relation to demolition, the Council indicated at the Hearing that the basis behind

the reason for refusal was the lack of a suitable replacement scheme for the site and that there were no other reasons for seeking retention of the existing building. The appellant considers that the removal of the existing bungalow would be beneficial to the appearance of the conservation area. Whilst I accept that the existing bungalow is of low merit, I consider that a vacant demolition site would not improve the appearance of the area and that demolition should only be accepted as and when an alternative scheme for the site is available.

23. I therefore conclude that if a suitable scheme for redevelopment of the site is available then the demolition of the existing bungalow would be acceptable and would comply with saved LP Policy HE3, which aims to protect buildings in conservation areas from demolition.

Other Matters

24. Concern was raised by residents in relation to the proximity of the bungalow on Plot 10 to the rear boundaries of the bungalows fronting Northlands Road South. The pair of bungalows at 4 and 6 Northlands Road South have relatively short rear gardens of around nine metres with a wall along the rear boundary. The proposed bungalow would be some one metre beyond the boundary with an eaves height of around 2.3 metres and a low-pitched roof that slopes away from the boundary. Whilst there would undoubtedly be a change in outlook, I do not consider that this would be unacceptable and the Council raise no concerns in this respect.

Conclusions

25. I have concluded that density of development would not harm the character and appearance of the surrounding area and settlement, that the form of the development would preserve the character and appearance of the Winterton Conservation Area and that the proposals would not harm highway safety. For these reasons, and taking all other matters into account, I conclude that Appeal A should be allowed. As there is an acceptable scheme for redevelopment of the site, I also consider that demolition of No 59 can be allowed and I conclude that Appeal B should succeed.

Conditions

26. The Council submitted a number of suggested conditions with their statement, but a number of these would limit the extent of any permission and would require a complete redesign of the scheme. This would be contrary to the advice contained in Circular 11/95: *The Use of Conditions in Planning Permissions* and the Council withdrew them. I have therefore considered the conditions attached to the report to committee recommending permitting the proposals and have adjusted their wording where necessary in the interests of clarity.
27. I consider that conditions relating to materials and landscaping are necessary to ensure assimilation of the development into its setting. I also agree that conditions relating to access provision, parking space provision, access surfacing and wheel washing are necessary in the interests of highway safety. However, a condition relating to details of drainage and other services is not required as it was agreed at the Hearing that these matters have already been submitted in sufficient detail and nor is a condition relating to specifying the plans to be approved. The surfacing of the access drive is specified so a condition restricting the use of loose material is not necessary and nor is a condition to control planting on areas to be adopted as part of the highway.

28. In respect of the demolition of the bungalow, the committee report recommended a condition requiring work to start on the redevelopment prior to demolition taking place and, bearing in mind my comments in respect of demolition, I have applied this condition.

Andrew Jeyes

INSPECTOR

SCHEDULE OF CONDITIONS: APPEAL A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the make, type and colour of all the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) All planting, seeding or turfing comprised in the approved details of landscaping shown on Drawing Number WT/125/2/03 shall be carried out in the first planting and seeding seasons following the occupation of the penultimate dwelling of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 4) No development shall take place until details of the junction of the access road with West Street and the associated visibility splays have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The junction and associated visibility splays shall be provided prior to the commencement of any other works on the site.
- 5) No dwelling shall be occupied until the vehicle parking spaces serving it have been completed and, once provided, the vehicle parking spaces shall be retained.
- 6) No dwelling shall be occupied until the access road has been completed to at least base course level and is provided with lighting from its junction with West Street up to the access to the that dwelling.
- 7) The occupation of the penultimate dwelling on the site to be occupied shall not commence until the access road has been completed.
- 8) No development shall take place until details of wheel cleaning facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. Works shall not commence until the agreed wheel cleaning facilities have been provided.

APPEARANCES

FOR THE APPELLANT:

Mr R I Stuart MRTPI DipTP DipLD	DNS Planning and Design.
Mr P Grover BA[Hons] BTP MRTPI IHBC Dip Arch Cons	Grover Lewis Associates.
Mr M Rayers BSc[Hons] MCIT MIHT CMILT	BSP Consulting.
Mr G Whall	The appellant, Keiger Homes Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Goldthorpe BA[Hons] DipURP MRTPI	Principal Environmental Planning Officer, North Lincolnshire Council.
Mr P Scott MICE IEng MIHT MMI	Highways, North Lincolnshire Council.

INTERESTED PERSONS:

Councillor Mrs L Cawsey	Councillor, North Lincolnshire Council and Mayor, Winterton Town Council.
Mrs S Hawley	Local resident.
Councillor Mr A Smith	Councillor, North Lincolnshire Council.
Mr & Mrs Cowling	Local residents.

DOCUMENTS

- 1 List of persons attending the Hearing
- 2 Winterton Conservation Area Appraisal; submitted by the Council.
- 3 Winterton Conservation Area Supplementary Planning Guidance; submitted by the Council.
- 4 Photograph of site frontage; submitted by the appellant.
- 5 Written application for the award of Costs; submitted by the appellant.



Costs Decision

Hearing held on 26 August 2009

Site visit made on 26 August 2009

by **Andrew Jeyes BSc DipTP MRTPI**

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

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**Decision date:
9 September 2009**

Costs application in relation to Appeal A: APP/Y2003/A/09/2102072 59 West Street, Winterton, North Lincolnshire DN15 9QG

- 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 Keigar Homes Ltd for a full award of costs against North Lincolnshire Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of 14 new dwelling houses with associated garaging and parking and formation of new access road.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Keigar Homes Ltd

1. The written application is for a full award of costs in relation to having to prepare for and attend the Hearing. The validity of all three reasons of refusal is questioned, but especially the matter of highway safety. Paragraph B20 of Annex B of Circular 03/2009¹ indicates that the Council is not bound to accept the advice of officers, but if they do not do so, then they must show reasonable planning grounds for their decision and produce relevant evidence to support the decision in all respects. In considering the application, the Council disregarded the advice of officers and relied entirely on hearsay. Paragraph B21 indicates that whilst the Council must consider the views of local residents, the extent of local opposition is not, in itself, a reasonable ground for resisting development.
2. Paragraph B18 indicates that planning appeals often involve matters of judgement but that vague, generalised or inaccurate assertions unsupported by objective analysis are likely to give rise to a costs award. Paragraph B19 indicates that design evidence should demonstrate a clear understanding of context.
3. The Council only produced one statement and the officer was not an expert in traffic or general planning issues. This statement contains no technical evidence to back up limited and vague comments and no data about traffic or pedestrian numbers to support the case. In relation to design, there was no proper assessment and support by the Winterton Conservation Area Supplementary Planning Guidance [SPG] was only introduced at the Hearing. The Council adopted a cavalier attitude to issues of density and conservation with no proper assessments submitted to support the statements made.

¹ Circular 03/2009: *Costs awards in appeals and other planning proceedings.*

The Response by North Lincolnshire Council

4. In reaching their decision, the Council considered that all three reasons of refusal carry equal weight.
5. The Council consider that that housing would only be acceptable providing that it does not compromise character and there was debate about the suitability of this part of the conservation area to accept additional housing. The appellant stated that this site is a visually poor part of the area and can therefore be developed at densities similar to other areas. However, policy limits housing development to complying with the relevant character of the area. The Council is of the view that the development would cause demonstrable harm and is not convinced that development in depth would be appropriate given the open character of the rear of the properties between West Street and High Street.
6. The Winterton Conservation Area Appraisal [for which apologies are given for late submission] indicates that public open space in the conservation area is limited but that this deficiency is made up by space in private ownership. That space is important to character and that the loss of that space would adversely affect the character of the conservation area.
7. In respect of density, Mr Stuart's statement for the appellant indicates that it is undeniable that the proposed density is out of character with the suburban character of Winterton and, in the Council's view, with those parts of higher density within the conservation area. This is a clear indication that density is harmful to character.
8. Design was not a matter referred to in the reasons of refusal and should not form part of the Council's case or require a response in a claim for costs. The Council appreciate that the appellant may feel that the introduction of design is indicative of the machinations of the Council to bolster its case. However, this is not so, and the reason for introducing design was an error by the officer and not the Council. At this stage, it has no bearing on the claim for costs.
9. In respect of highway safety, it is accepted that access design is well established as are the parameters used to determine layout and safety considerations. The appellant has accurately pointed out the provisions of guidance concerning evidence presented by expert officers within the context of Council decision-making. Whilst guidance speaks of evidential basis and clear reasons of refusal, it does not say what amounts to strong evidence and, as explained, it does not say that the Council should determine applications in accordance with officer advice.
10. In this instance, the Council considered that the representations made by local residents concerning highway issues and highway safety were important and were material considerations that fall within the remit of guidance and should therefore be given appropriate weight. On a route that is a main thoroughfare by which local people and children access school provision, the Council felt disposed to give the experiences and opinions of those people proper expression through the planning system. This it has done.
11. The Council is also concerned about the potential for a proliferation of access points along this important route, such that further developments of 14 dwellings or more will further reduce parking provision and increase traffic numbers, a serious concern to local residents.

12. The Council consider that it has properly considered all matters before it. It had a report where officers of the Council have laid out the matters that should be considered and to which it has given careful consideration. On balance, and taking into consideration the views expressed by local residents at the meeting on both highway and conservation matters, it has determined to refuse planning permission for the reasons stated. It does not consider therefore that in refusing planning permission it has acted unreasonably in any way and feels that it has substantial evidence concerning harm to both the character and appearance of the conservation area and highway safety.

Conclusions

13. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
14. The applications were recommended for approval by officers but were refused by the relevant Council committee. Paragraph B20 of Annex B of Circular 03/2009 indicates that there is no reason why a decision contrary to officer advice should not be made by elected members, provided they have reasonable planning grounds for taking the decision and are able to produce relevant evidence to support their decision in all respects. Paragraph B16 indicates that in any appeal proceedings, the Council will be expected to produce evidence to substantiate each reason of refusal by reference to the development plan and other material considerations. The Council will be expected to produce evidence to show clearly why the development cannot be permitted.
15. In respect of Reason 1 relating to density, the Council considered that the density was excessive and would cause harm to the character and appearance of the settlement and the conservation area. There was no evidence of substance to substantiate this reason. Saved Policy H9 of the North Lincolnshire Local Plan 2003 [LP] indicates that in Winterton, the density should be compatible with that of the settlement with a minimum density of 30 dwellings per hectare unless there are over-riding reasons relating to the character of the surrounding built environment. There was no analysis of density issues and no evidence of substance to indicate what harm would directly arise from the density proposed. The only evidence put forward related to the form of layout proposed, which was covered by Reason 3 of the refusal.
16. Reason 3 related to backland or in-depth development and concerned the use of back garden areas using a cul-de-sac to provide access. Reliance was placed on guidance within the SPG to support this issue. There was no analysis of townscape issues in this part of the town and the evidence ignored the analysis contained within the committee report indicating that the area does not exhibit any historical quality and character of the yards and backland of properties that face West Street and High Street to the east of the play area. The site visit confirmed that the proposed development would have very limited visibility from the public realm and that the development behind the proposed West Street cottages would have little impact on the surrounds. The cottages fronting West Street would be of an appropriate design and siting.
17. The Council in their written submissions also raised concerns relating to the design of the frontage cottages, although this was not part of the reasons of refusal of the

application. These concerns were withdrawn at the Hearing, but were part of a design case advocated in the written submissions.

18. The second reason related to highway safety. The Council accept that the proposal complies with their published technical guidance and with guidance in Manual for Streets in relation to the proposed junction, but consider that locally expressed concerns over-ride such considerations. Concern was expressed relating to conflict between the access position and school and other parking in the street, conflict with pedestrians and increases traffic. However, no highway evidence was submitted relating to parking in West Street, pedestrian flows, traffic generation or of problems that would arise from the siting of the access close to the Northlands Road South junction. The Council relied on hearsay evidence from residents and local councillors, and contrary to the guidance contained within Paragraph B22 did not substantiate, through evidence, the extent of any harm that could arise.
19. For these reasons I consider that the Council has not provided any evidence of substance in relation to the appeal and has failed to justify adequately its reasons of refusal contrary to the advice in Paragraph B20 of Annex B. It has relied on local hearsay evidence in respect of highway safety issues, contrary to the advice in Paragraph B22. I consider that the Council have therefore behaved unreasonably in refusing permission. The appellants have been put to the expense of an unnecessary appeal.
20. In conclusion, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated. I therefore conclude that an award of costs is justified.

Formal Decision and Costs Order

21. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that North Lincolnshire Council shall pay to Kiegar Homes Ltd the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of planning permission for the erection of 14 new dwelling houses with associated garaging and parking and formation of new access road on land at 59 West Street, Winterton, North Lincolnshire DN15 9QG.
22. The applicant is now invited to submit to North Lincolnshire 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 Supreme Court Costs Office is enclosed.

Andrew Jeyes

INSPECTOR

DOCUMENTS

- 5 Written application for the award of Costs; submitted by the appellant.