

Costs Decision

Hearing held on 6 April 2016 and 25 May 2016

Site visit made on 6 April 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 05 August 2016

Costs application in relation to Appeal Ref: APP/B1930/W/15/3141193 54 Oaklands Lane, Smallford, St Albans AL4 0HS

- 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 and Mrs Barba for a partial award of costs against St Albans City & District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the demolition of 54 Oaklands Lane and Radio Nursery comprising of 8 dwellings, packhouse, vehicle repair and maintenance workshop, glasshouses and the removal of contractor's yard. Construction of 28 houses with garages with access from Oaklands Lane.
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Decision

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

The submissions for Mr and Mrs Barba

2. Mr and Mrs Barba applied for an award of costs. There are four broad areas where the applicants claim the Council acted unreasonably, all relating to the second reason for refusal (RR2). Firstly it is noted that the Council's officer conceded at the Hearing that Policy 7A of the St Albans City and District Local Plan Review 1994 (LP) did not apply to the appeal proposal. Secondly that LP Policy 8 could never apply to a proposal that did not comprise (a) 100% affordable housing and (b) were in excess of 0.4 hectares. Thirdly that paragraph 50 of the National Planning Policy Framework (the Framework) relates to plan making *not* development control decisions in seeking to "plan for a mix of housing... identify the size, type, tenure and range of housing that is required for a particular area..." and "where they have identified that affordable housing is needed, set policies for meeting this need onsite unless offsite provisional financial contribution..."
3. The final area of contention is that the Council referred to its Affordable Housing Supplementary Planning Guidance (SPG) (2014) at the Hearing but the document did not form part of the Council's appeal documents and in any case only relates to LP Policy 7A.

The response by St Albans City and District Council

4. Notwithstanding the withdrawal of LP Policy 7A at the Hearing, the Council maintains its position that the development plan as a whole requires affordable housing, and that the Council's Strategic Housing Market Assessment (SHMA)
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(2013) indicates an acute need for affordable housing. It further notes that affordable housing need has been accepted in other nearby developments, such as the Chester Nursery site.

5. Furthermore, the validity of development plan policy was not questioned at any point during pre-application enquiries and negotiations, and the viability assessment was produced during the determination of the application and thus costs should not be attributable to the production of that document.

Reasons

6. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
7. RR2 states that "in the absence of adequate provision for affordable housing, the proposal would conflict with the provisions of..." LP Policy 7A and LP Policy 8 "...and would cause harm by further exacerbating the shortfalls in affordable housing opportunities within the District".
8. The Council referred, albeit briefly, to the Affordable Housing SPG at the Hearing in support of RR2. A copy of this document was not supplied as part of the appeal submissions, and it was not referred to in the Planning Officer report. However, paragraph 5.1.2.5 of the applicants' grounds of appeal mentions the SPG, noting that the document alters the levels and trigger thresholds for affordable housing on sites covered by LP Policy 7A. The Council also referred to the SPG in responding to the applicants' grounds of appeal at paragraph 7.3 of its statement.
9. Whilst it is unfortunate that the Council made a brief reference to the SPG at the Hearing in relation to the appeal proposal, it is clear that the applicants were aware of the document and reference to it would not have come as a surprise. Consequently I do not consider this to be unreasonable behaviour leading to unnecessary or wasted expense.
10. Nonetheless, the Council initially based its refusal on LP Policy 7A, which only applies to land within Towns and Specified Settlements, and subsequently confirmed at the Hearing that the policy did not apply to the appeal proposal. Furthermore, I have found that LP Policy 8 is not applicable to the appeal scheme, as the site is greater than 0.4 hectares in area.
11. Paragraph 50 of the Framework requires LPAs, amongst other things, to deliver a wide choice of high quality homes, plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community, and to identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand.
12. The Council has not explained its policy rationale for seeking a certain level of affordable housing on the appeal site, and why the percentage proposed by the appellants was inadequate. The SPG was not included in RR2 and appears not to apply to developments outside Towns and Specified Settlements. Moreover, although the SHMA was cited in the Planning Officer's report, this was in relation to the authority's five year housing land supply, and the report makes no comment in respect of affordable housing requirements. As such, there is no basis in local policy for a particular level of affordable housing in the location

subject of the appeal. Individual negotiations on other nearby sites regarding affordable housing are not sufficient justification for requiring a similar amount on the appeal site.

13. I therefore conclude that RR2 has not been substantiated, leading the applicants to incur unnecessary or wasted expense in the appeal process. A partial award relating to the costs incurred by the applicants in defending arguments relating to this matter during the appeal is therefore appropriate. This excludes the Affordable Housing Viability Assessment (June 2015) which was produced before the application was determined.

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 on that behalf, IT IS HEREBY ORDERED that St Albans City and District Council shall pay to Mr and Mrs Barba the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending arguments related to affordable housing.
15. The applicants are now invited to submit to St Albans City and District 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 Cost Office is enclosed.

Claire Victory

INSPECTOR