The Planning Inspectorate

Costs Decision

Hearing held on 27 September 2016

by P W Clark MA MRTPI MCMI

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

Decision date: 18 October 2016

Costs application in relation to Appeal Ref: APP/Q1153/S/16/3146934
Land Adjacent to Baldwin Drive, Radford Way, Okehampton, Devon

- The application is made under the Town and Country Planning Act 1990, sections 106BC, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Leander Developments Ltd for a full award of costs against West Devon Borough Council.
- The hearing was in connection with an appeal against a refusal to modify a planning obligation relating to a development of 43 dwellings.

Decision

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

The submissions for Leander Developments Limited

2. These were made in writing prior to and supplemented orally at the Hearing. In summary, they are: that the Council used software which differed from that used by the appellant; that the Council did not detail its areas of concern until its decision had been made; that the Council still has not produced its own independent assessment to justify its decision; and that evidence which should have been submitted was not submitted until the hearing itself. In consequence, the Council has prevented or delayed development which should have been permitted, has failed to produce evidence to substantiate its decision and relies on vague, generalised or inaccurate assertions unsupported by objective analysis. No viability assessment was submitted in 2012 and the decision should be made on the basis of the viability assessment submitted in 2015.

The response by West Devon Borough Council

3. This was made in writing at the opening of and supplemented orally during the Hearing. In summary it is: that the appellant progressed the scheme to and including reserved matters stage without any suggestion of a viability issue even though the data to support a claimed lack of viability predates the reserved matters; that no explanation has been given of how circumstances have changed since the outline scheme was promoted and the scheme remains viable with more than 7% affordable housing; that the Council sought a meeting between the parties' experts to discuss their differences but that the appellant was reluctant; that at the meeting which took place on 11 January 2016, the Council's concerns were clearly expressed and so it was not unreasonable that the confidential written report from the viability consultant was not provided; and that the closest comparable in the evidence submitted

by the Council at the hearing was recognised by the appellant's agent and was not new to him.

Reasons

4. The Planning Practice Guidance 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.

5. There is no requirement for the two parties to use the same software package in analysing viability. It is not unreasonable for the Council's consultants to use whatever package they are familiar with.

6. It is clear from the two notes which each party prepared of the meeting which they held on the 11 January 2016, prior to the Council's decision, that the Council had explained its points of disagreement in general terms and had explained how it thought it could substantiate its points of disagreement but had not actually done so at the time.

7. In itself, that is not unreasonable provided it can produce substantive evidence to support its decision when that decision is challenged on appeal, as here. However, the Council adduced no substantive evidence to support its views on most of the points of disagreement with the appellant, preferring to argue most points in terms of general principle. The only substantive evidence (of comparable values of GDV) was first produced at the hearing itself and (as reported in my decision on the appeal) did not support its case. So, there is a degree of unreasonableness.

8. However it would be wrong to conclude as a result that the appeal was entirely unnecessary because, in fairness, the Council gained concessions from the appellant at the Hearing in terms of Build Period and Financing Costs, if not in terms of existing land value, developer's profit or marketing costs. And, most significantly, the Hearing established that the appellant had been mistaken in basing the claim on social renting values when the planning obligation allowed for higher value affordable renting.

9. So, the expense of the Hearing was not entirely unnecessary. Indeed, once the appeal was launched, it is hard to see what additional expense has been incurred by the appellant in addition to the material prepared in any event for the application to vary the obligation. The appellant's representative accepted that he was already aware of some of the evidence submitted by the Council and there was minimal delay at the Hearing itself caused by its consideration.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

P. W. Clark

Inspector