The Planning Inspectorate

Costs Decision

Site visit made on 18 October 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 8th November 2016

Costs application in relation to Appeal Ref: APP/B1605/W/16/3152390 Land rear of Nuffield Hospital, Hatherley Lane, Cheltenham, Gloucestershire,GL51 6PN

- 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 Grovefield Car Parking Ltd. for a partial award of costs against Cheltenham Borough Council.
- The appeal was against the refusal of an application for residential development of up to 27 dwellings.

Decision

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

Reasons

2. The national 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.

3. The appellant's application for partial costs relates to the Council's' insistence over the submission of a financial viability assessment to demonstrate that the policy requirements of 40% affordable housing and contributions for education and library provision were capable of being delivered, notwithstanding the appellant's stated agreement to these requirements. This is said to constitute unreasonable behaviour as it resulted in a wasted effort and cost the appellant company the additional expense of responding to this issue on the appeal.

4. In the planning appeal, I found that that there was no support in the development plan for the Council's insistence of a financial appraisal of viability at application stage, where the appellant had agreed to meet the Council's stated requirements. Further, I noted that the PPG says in paragraph 16 regarding 'Viability' that "decision taking on individual applications does not normally require consideration of viability. However where the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary".

5. The Council says that that the current practice of requiring a viability assessment even where a proposal accords with policy promotes certainty and avoids abortive work in the long term. However it is clear to me that the circumstances of any proposed development may change and a current assessment of viability is no guarantee of it remaining so in the long term.

6. The appellant also refers to delays on the Council's side in getting information together for a formal Undertaking but given that such an Undertaking has been submitted in time for a decision on this appeal, the appellant has not suffered wasted effort on this particular aspect.

7. Overall, I conclude that that the Council's insistence on a financial appraisal to demonstrate viability at this stage, where the policy requirements are agreed and where no there is no submission that these should be reduced, flies in the face of clear and specific government guidance and has no sound planning justification. This constitutes unreasonable behaviour and has resulted in the appellant incurring, in part, additional costs.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Cheltenham Borough Council shall pay to Grovefield Car Parking Ltd. the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the second reason given for the refusal of planning permission, such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to the Council, whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Murray

INSPECTOR