
Costs Decision

Site visit made on 25 October 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 2 December 2016

Costs application in relation to Appeal Ref: APP/P1133/W/16/3150998 Land at Aller Road, Kingskerswell, Devon TQ12 5AN

- 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 Chris Howard Group for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of planning permission for residential development comprising 9 open market 3-bed dwellings and 4 affordable 2-bed dwellings with provision of new pavement to public highway.
-

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 application was made on six different grounds. The first was that the Council should have accepted the amended plans and additional information submitted on 28 April 2016 for consideration and made its decision on that rather than that previously submitted.
 4. I note from the correspondence that previously an extension for the period to determine the application had been agreed to 30 April 2016. This was the date for determining the application, not for the submission of any further revised details. It is reasonable for a Council to assume that an applicant wishes the scheme as submitted to be determined; not that this is a position for negotiation.
 5. I also note that 30 April was a Saturday, which meant that in reality the extension of the period for determination had been agreed until 29 April to allow the decision to be issued during the working week. Given that the Council would have had to go through various administrative procedures between making the decision and the formal issue of the decision notice to allow for transmission to the applicant within the already agreed timescale it is not surprising that the decision was issued on 28 April.
 6. Given the applicant must have been working on the revised details prior to the submission, and knowing that 30 April was the deadline for the decision, it would have been appropriate for the applicant to advise the Council that
-

- further amended plans were to be submitted some time before they were submitted and agreeing a further revised timescale. I have seen no correspondence to that effect and therefore it was reasonable for the Council to make its decision based on the plans it had in front of it at the time.
7. The second ground of application was that the Council did not have sufficient grounds to consider the affordable housing to be easily distinguishable from the open market housing. The relevant policy, Policy WE4 of the Teignbridge Local Plan 2013 – 2033 (the TLP), requires “affordable and market housing on a site should as far as practicable be visually indistinguishable from each other in quality, whilst allowing for buildings to be individual and have character”. It is thus a matter of judgement as to whether the proposal met this criterion.
 8. Although I disagreed in part with the Council on this matter in respect of the designs of the properties the Council provided substantial evidence to support its concerns, particularly as to layout, where I agreed with it, and I conclude that it did not act unreasonably in this regard.
 9. The third ground related to the effect on the nearby listed building. Here both parties agreed that the proposal would give rise, within the terms set out in the National Planning Policy Framework, to less than substantial harm to the significance of a designated heritage asset. It was then a matter of judgement as to whether this harm was outweighed by the public benefits of the development. Again, although I disagreed with the Council on this matter the Council provided substantial evidence to support its concerns and I conclude that it did not act unreasonably.
 10. The fourth ground related to drainage. Here it was only with the additional information submitted on 28 April 2016 that the appellant asserts that it overcame this reason for refusal. For the reasons set out above it was not unreasonable for the Council not to have used this information when it made its decision. In addition, I have found that the evidence in front of me did not demonstrate that a satisfactory drainage solution had been promoted. Thus even with the lodging of the appeal and the proper reviewing of its case following the lodging of an appeal it was not unreasonable for the Council to pursue this matter.
 11. The fifth ground related to whether the proposed layout would allow for the comprehensive planning of the whole of allocation site. I have looked through the correspondence on the appeal and note that it was only with the letter sent on behalf of the adjoining landowner on 21 September 2016 that it confirmed that, from its perspective, the proposal did not prejudice the development of the adjoining area of land. In this letter it notes that it “has not been in a position until very recently to start to develop residential proposals for its own site until issues relating to the compulsory land acquisition in connection with the South Devon Link Road have been settled”.
 12. Until this correspondence had been received it was not unreasonable for the Council to maintain that it should have been demonstrated that the development was comprehensively planned with the adjoining land in accordance with the supporting text to Policy KK3 of the TLP which forms part of the adopted development plan for the area.
 13. The final ground related to the alleged lack of guidance from the Council as to the form of development that it would be likely to find acceptable. In looking

through the post-application correspondence the Council set out its concerns, and it is not for the Council to design a scheme for an applicant. It is clear that there was a fundamental disagreement between the parties as to the design approach for the site which was likely to only be settled through an appeal. It was a matter of judgement as to how the design approach should be pursued and I consider that the Council provided substantial evidence to support its view that the overall layout was inappropriate. I therefore conclude that the Council did not act unreasonably in this regard.

Conclusion

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

RJ Jackson

INSPECTOR