

Costs Decision

Hearing held on 7 February 2017

Site visit made on 8 February 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 16th February 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3156959 Land to the west of Close Lane, Alsager ST7 2TS

- 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 Stewart Milne Homes for a full award of costs against Cheshire East Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for a mixed residential scheme to provide affordable, open market and over 55s sheltered accommodation, open space and new access without complying with condition 27 attached to planning permission Ref 13/1305N, dated 29 July 2014
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Decision

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

The submissions for Stewart Milne Homes

2. The appellant made an application for costs in writing but augmented this at the hearing with further oral submissions. Their application for an award of costs is made on the basis that it is claimed the Council have failed to produce evidence to substantiate the reasons for refusal, and have perpetuated with the imposition of a condition that is no longer reasonable or necessary. In so doing it is argued the Council both prevented and delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
 3. The appellant's submission indicated that the Council had produced no evidence of how the proposed revised condition would conflict with Policy SC4 of the emerging *Cheshire East Local Plan Strategy* (CELP). In particular it highlights that the policy sets no specific requirement for the amount of older persons housing, and that the Council is taking an inconsistent approach in their decision making in requiring so much from a single site.
 4. In addition, it is argued that the Council have not produced any evidence to counter that provided by the appellant that the provision of that amount of over 55 housing is undeliverable. Nor have they provided any evidence to substantiate the claim that the scheme would be unsustainable. In the light of this it is claimed that the Council's persistence in seeking compliance with a condition that cannot be complied with is unreasonable.
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The response by Cheshire East Council

5. The Council responded verbally to the appellant's claim for costs at the hearing. They highlighted that members are not bound by the recommendations of their Officers and are entitled to give their own weight to the development plan and relevant material considerations. In this case they considered the change to the housing mix would have resulted in too many larger houses, and insufficient smaller houses to create a balanced mix on the site, and so it was considered the scheme would have been contrary to Policy SC4. It was emphasised that, due to the progress in the preparation of the CELP, this policy now has greater weight than it did either when the original outline application, or the first Reserved Matters application, was considered. The Council highlights that the overall housing mix on the site is a relevant material consideration, to which members were entitled to give weight.
6. In addition, it was argued that the Council's appeal statement did adequately substantiate the reason for refusal, and in the absence of any viability evidence or a layout plan, to show that 56 houses could not be accommodated on the site, it is considered that the condition is still reasonable and necessary.

Reasons

7. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
8. The decision of the Committee of the Council to refuse the application that is the subject of the appeal was taken contrary to the recommendation of its Officers. The Officer's report sets out clearly why it was considered that maintaining the condition was not considered to be reasonable. As detailed in my appeal decision, I have also found that the continued imposition of the disputed condition is not reasonable.
9. Whilst the Committee of the Council responsible for determining applications is not bound by the recommendations of its Officers, in such circumstances it is important that relevant evidence to support the decision is provided at appeal. However, the Council have not disputed the appellant's evidence that shows that there is no interest in the provision of sheltered accommodation on the site. Whilst the appellant has not produced a specific layout to show that 56 houses cannot be provided over the two remaining areas, neither has any substantive evidence been produced by Council at the appeal to show that it is realistic for the remaining 20% of the site to provide 56 dwellings, when only 74 houses are being provided on the rest of the site.
10. The Council's evidence does highlight the need for accommodation suitable for over 55s, but there is no substantive evidence why it is considered essential that this site should be required to contribute such a high proportion of older persons housing. Nor is there any clear evidence why a scheme with a lower proportion of age-restricted dwellings would be unsustainable, or would not be compliant with Policy SC4, especially as the actual layout and housing mix on the remainder of the site is not actually a matter that is to be determined through this application/appeal.

11. In the light of this lack of evidence the Council have persisted in supporting the imposition of a condition that is not reasonable, and therefore does not comply with the guidance in the National Planning Policy Framework. I therefore consider that the Council's approach does represent unreasonable behaviour, and this has directly resulted in the need for this appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary, and wasted, expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Cheshire East Council shall pay to Stewart Milne Homes, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to character and appearance; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Cheshire East 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.

Alison Partington

INSPECTOR