
Costs Decision

Hearing held on 17 and 24 January 2017 and 15 February 2017.

Accompanied site visit made on 17 January 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 2 March 2017

Costs application in relation to Appeal Ref: APP/V2723/W/16/3152766 Somerset Close, Catterick Garrison, North Yorkshire, DL9 3HE

- 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 Gleeson Developments Ltd for a full award of costs against Richmondshire District Council.
 - The Hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of 40 no. 2, 3 and 4 bedroom 2-storey residential dwellings and associated works.
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Decision

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

Reasons

2. The appellant's costs application and the Council's response were submitted in writing with final comments from the appellant made orally.
3. The *Planning Practice Guidance* (PPG) advises that, 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. In summary, the appellant argues that the Council has behaved unreasonably by not adequately substantiating its views concerning the likely sale prices of the proposed dwellings and land value; factors which underpin its reason for refusal that whilst it would be viable to provide Affordable Housing, none was provided for contrary to policy. The appellant considers that if a more realistic approach had been taken to the determination of these factors by the Council, it is likely that planning permission would have been granted and the appeal, together with the associated costs, avoided.
4. The PPG indicates that a local planning authority is at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal or if they prevent or delay development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations.
5. The Council's Hearing Statement indicated that the source of the sales price data it relied upon was work undertaken in 2013¹ to inform the viability assessment carried out in support of the outline planning application for the

¹ Deloitte report entitled Catterick Garrison, Richmondshire-Options Appraisal Baseline.

site, Ref. 14/00109/OUT. I acknowledge that the explanation given in the statement of the work undertaken to check that the data was still relevant was limited. However, that evidence was supplemented at the Hearing. For example: it provided a fuller explanation as to how it had validated the figures by reference to sales values associated with a more recent development in Colburn Village by Linden Homes, with discounts based on professional judgement to allow for likely differences between the schemes; and, it provided a comparison between its figures and those associated with an ongoing Persimmon development, which had been identified and favoured by the appellant at the Hearing as a comparator. I consider that the Council provided adequate substantiation for the sales values upon which its viability assessments were based.

6. In my appeal decision, I determined that the open market sales values relied on by the Council are likely to be a reasonable indication of the value of the proposed units and that it appears that the sales figures promoted by the appellant in its viability appraisals under value the scheme.
7. The Council's reason for refusal indicated that, in the context of the appellant's viability assessment, the land/site value had not had regard to the requirement of the PPG that it should reflect policy requirements, with particular reference to Affordable Housing. In its written and oral appeal submissions the Council has provided evidence to support that position. This included submissions that the land value used was based on the purchase price paid for the site, which in turn was informed by the 'Gleeson Development Model' for low cost housing, not Affordable Housing as defined by the *National Planning Policy Framework* (the Framework). Furthermore, the purchase price took no account of the Affordable Housing planning obligations associated with the outline planning permission; a matter confirmed by the appellant at the Hearing. In addition, evidence has been submitted which indicates that the MOD would have been likely to accept a lower purchase price that would make greater provision of Affordable Housing viable, with reference to the viability assessment produced in support of the outline planning permission.
8. Notwithstanding its view that the price paid for the site did not properly reflect policy, the Council has not sought to promote the use of a lower land value in the viability assessments. At the Hearing, the Council explained that it saw no need to promote a lower figure, as its viability assessments supported its reason for refusal that Affordable Housing would be viable, even if the purchase price was used. I consider that this is not an unreasonable approach.
9. In my judgement, the Council has adequately substantiated its reason for refusal, with reference to the Development Plan, national policy and other material considerations. Furthermore, in my appeal decision, I have concluded that the appeal should be dismissed. It follows that the Council has not prevented or delayed development which should clearly be permitted.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

I Jenkins

INSPECTOR