

Costs Decision

Hearing held on 10 January 2017

Site visit made on 10 January 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 21 March 2017

Costs application in relation to Appeal Ref: APP/U1105/W/16/3156141 Land South of King Alfred Way, Newton Poppleford, Devon EX10 0DG

- 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 East Devon District Council for a partial award of costs against Cavanna Homes (Devon) Ltd and Pencleave 2.
 - The hearing was in connection with an appeal against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission for 40 houses, doctors' surgery and associated infrastructure, open space and landscaping; Outline application was not EIA development.
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Decision

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

The submissions for East Devon District Council

2. The appellants have raised in detail, new and previously untested evidence to support their appeal in the form of a viability appraisal. This is a substantial and serious introduction which has occurred after determination of the application. As such it has given the Local Planning Authority (LPA) no opportunity to appropriately review this evidence or allow its Members to formulate their view having regard to this information. As a result it is the opinion of the LPA that this amounts to unreasonable behaviour failing to have regard to paragraph 052 Reference ID: 16-052-20140306. This necessitated the preparation of new evidence that would not otherwise have occurred, and for the appeal to be heard through a Hearing instead of by written representations, resulting in significant and otherwise unexpected time and associated cost in the preparation of the Council's case.
3. Additionally, the quality and robustness of the viability information submitted is severely lacking, in particular in failing to provide a detailed Residual Land Value calculation. In addition it lacks sufficient information in respect of the details used for comparable schemes, and only addresses the main residential component of the proposal rather than the scheme as a whole while trying to demonstrate very specific layout impacts.

The response by Cavanna Homes (Devon) Ltd and Pencleave 2

4. The LPA were provided with the full suite of appeal documents on the date on which the appeal was first lodged. The LPA therefore had ample time in which
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to undertake any work in response to the issues raised or to highlight its concerns on this matter.

5. The appellants had no choice other than to provide this evidence as part of their appeal. The appellants had revised their proposals to reflect officers advice in respect of the dispersal of affordable housing. Officers recommended the scheme for approval, it being subsequently refused by Members solely on the grounds of a lack of affordable housing dispersal.
6. It is considered entirely reasonable for the appellants to explain why the disposition of the affordable housing takes the form it does and also necessary to show why they are unable to undertake further dispersal in order to deliver an economically viable scheme. As the appellants were able to accommodate the level of dispersal proposed by officers, there was no need or requirement to enter into a discussion on scheme viability at that time. However, with the repeated and inexplicable objections from Members on this point, it became evident that details on the background to this issue needed to be provided as part of this appeal.
7. In relation to the adequacy of the viability evidence, this was prepared by Savills, who are fully qualified and expert practitioners in this field. The viability material provided gives a full explanation of the assumptions used. The level of information provided is entirely commensurate with that required for use at a Hearing.
8. Notwithstanding issues relating to viability, issues surrounding the Council's consistency of approach and the level of local interest meant that a Hearing was the most appropriate procedure irrespective of whether matters of viability were also to be considered.

Reasons

9. The 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.
10. The appellants submitted a site layout to address previous concerns relating affordable housing dispersal. In presenting a scheme that was to officers' satisfaction without any need for further justification, they could not reasonably have been expected to provide any further evidence in respect of this issue at that stage, prior to the decision being made.
11. It was only once refused planning permission that the appellants reasonably considered the need to provide justification in the form of viability evidence. This was submitted with the original appeal documents and so enabled the Council an adequate period of time to review, analyse and comment on it prior to the Hearing.
12. In respect of the quality and robustness of the viability information, the Council had the opportunity to raise its concerns in its appeal statement and then at the Hearing itself.
13. In conclusion, for the above reasons, I find that Cavanna Homes (Devon) Ltd and Pencleave 2 did not behave unreasonably in respect of the submission of scheme viability evidence and that, therefore, the Council's costs in addressing

this issue and attending a Hearing in respect of the appeal were not unnecessarily incurred or wasted. For this reason, and having regard to all other matters raised, neither a full or partial award of costs justified.

Andrew Dawe

INSPECTOR