Costs Decision

Site visit made on 27 March 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date:26th April 2017

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3165865
107 Boundary Road, Hove BN3 7GB

- 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 Brighton & Hove City Council for a full award of costs against Mr Coleman of Castlemist Finance Ltd.
- The appeal was against the refusal of planning permission for the demolition of existing house and erection of building to form 7 flats with associated parking.

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 Council indicates that the Planning Statement submitted with the planning application set out that the appellant did not consider that an affordable housing contribution should be sought in light of the Government's Written Ministerial Statement (WMS). During the course of the application the appellant was notified of the required contributions and the Council provided the appellant with a draft Section 106 Agreement. The Council advise that subsequently the appellant reviewed the scheme and advised that the scheme would not be deliverable should they agree to the payment of the contributions sought. Following this, it is said that the appellant declined to submit a Viability Assessment to the Council and confirmed that the Council should determine the application without a legal agreement being in place.

4. Following the appeal being lodged the appellant submitted a draft legal agreement to secure the sustainable transport contributions. However, the appellant, in his statement, outlined that due to the WMS the Council should not be seeking a contribution for affordable housing as the scheme is below 10 units. The Council also highlight that the appellant asserted that an affordable housing contribution would make the scheme unviable.

5. A Viability Assessment was subsequently submitted in support of the appeal. The Council appointed the services of the District Valuation Service (DVS) to consider and assess the financial viability of the scheme. The Council's contention is that it absorbed the cost of appointing the DVS when it should

have been borne by the applicant. It is said that the appellant declined to pay for the assessment.

6. Subsequently, the appellant agreed to sign a legal agreement relating to an established reduced affordable housing contribution and the sustainable transport contribution. In doing so this has overcome both reasons for refusal and the Council contends that the appeal has been completely unnecessary. Had the viability information been submitted at the application stage when the Council considers it should have been submitted, the appeal could have been avoided. For this reason, the Council consider that this amounts to unreasonable behaviour on the part of the appellant and the Council has been put to wasted expense.

7. The appellant disagrees and highlights that a substantive part of his case focused around the contention that the affordable housing sought by the Council was inappropriate in light of the Government's WMS as the development comprised fewer than 10 units. This is what is before the Inspector to conclude upon. The appellant considers that the Council has incorrectly sought to rely on development plan policies in reaching their decision. For this reason the appeal is considered by the appellant to be necessary.

8. It is of course open to Council and the appellant to come to a different view as to the weight to ascribe to development plan polices and the WMS but, the Council, in reaching their decision, must explain and evidence their reasoning. I am satisfied that the Council has done this and has substantiated its reason for refusal in these respects. I am also satisfied that the Council has provided substantive evidence as to why the relevant development plan policies are applicable and justification as to why they can carry more weight than the WMS in the consideration of this appeal. I conclude that the application was considered on its own merits in light of policy considerations and the WMS.

9. I consider that the appellant was entitled to hold and promote the view that the WMS obviated the need for development contributions and took precedence over the development plan policy. The fact that I have allowed the appeal does not, of itself, indicate that the appellant has behaved unreasonably in holding the above view. It is clear from examples of appeals submitted to me that it is necessary to balance the issues in each individual case.

10. The Council contends that it absorbed the cost of appointing the District Valuation Service (DVS) when it should have been borne by the appellant. The Council's Developer Contributions Technical Guidance indicates that where planning obligations are a necessary cost of development this will be factored into the development costs at an early stage. It also indicates that when concerns are raised by developers that a scheme may not be commercially viable, as a consequence of these obligations, these issues should be raised as soon as possible and detailed viability/cost information should be submitted to the Council at the earliest opportunity.

11. I acknowledge the fact that had a viability appraisal been submitted at the application stage an appeal may have been unnecessary and costs incurred by the Council avoided. Whilst the appellant did not do this I have not been directed to any specific mandatory requirement for the appellant to have done this at application stage. Instead, the appellant submitted a viability appraisal at the appeal stage that the Council submitted to the DVS at its own expense.

The submission of the viability appraisal to the DVS was a matter for the Council's discretion. Whilst the onus is on the developer to provide robust evidence to demonstrate the non-viability of a development proposal that may be substantiated by independent professional assessment, there is nothing before me that indicates that the cost specifically should be borne by the appellant.

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

Nicola Davies

INSPECTOR