

Costs Decision

Inquiry held on 28,29 and 30 March 2017

Site visit made on 30 March 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 28 April 2017

Costs application in relation to Appeal Ref: APP/E2734/W/16/3155389 Land south of Bar Lane, Knaresborough, North Yorkshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gleeson Developments for a full award of costs against Harrogate Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition/removal of existing buildings, followed by the development of 78 No. dwellings and access and landscaping works.
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Decision

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

The submissions for Gleeson Developments

2. The applicant seeks a full award of costs on three grounds. Firstly that the Council have prevented development that should clearly have been allowed having regard to the Development Plan, national policy and any other relevant considerations; secondly that the Council have failed to provide evidence to substantiate any refusal and thirdly that the Council have not determined like cases in a consistent manner.
 3. The applicant considers that the Council's Statement of Case does not substantiate their reason for refusal. The Statement of Case looks at mix in the market housing context only and appears to ignore the clear benefits of affordable housing where there is an acute need in the Borough. The Council fails to carry out the paragraph 14 balancing exercise and demonstrate how the benefits of the proposal are outweighed by the harm. The Council relies on Core Strategy Policy C1 and consider it allows them to dictate housing mix. If this is the case the applicant questions why the Council felt it necessary to introduce a separate housing mix policy. This is unreasonable.
 4. The applicant considers that paragraph 50 of the Framework relates to plan making and has no relevance or weight in this appeal. With the exception of the Hindhead appeal, which is not considered to be comparable, the Council has failed to provide other appeal decisions that have used this paragraph in a development management context. Its use in this way is unreasonable.
 5. The Council's evidence ignores the limitations on the use of the SHMA contained within the document itself. The SHMA is not a development
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management tool and should not be used at a site specific level. The applicant considers the SHMA does not form a material consideration and the use of this report as a determinative cannot be justified.

6. Finally in light of the Ash Grove, Ripon¹ appeal decision, the applicant argues that the Council should not have continued to contest the appeal scheme.

The response by Harrogate Borough Council

7. The Council consider that they have not acted unreasonably as their Statement of Case substantiates their suggested reason for refusal. The Council have not ignored the benefits of affordable housing and they acknowledge the economic social and environmental benefits of the scheme.
8. The Council consider that they have undertaken a paragraph 14 balancing exercise in its statement and in their view the planning harm significantly and demonstrably outweighs the benefits. The Council has substantiated their reliance on Core Strategy Policy C1 and paragraph 50 of the Framework. The difference of opinion between the parties on the weight to be given to different development plan policies does not demonstrate unreasonable behaviour.
9. The Council considers that the SHMA is capable of being a material consideration in this appeal. This view is supported by the Inspectors in the Hindhead² and Ash Grove appeals.
10. In respect of the Ash Grove appeal, the Council's case did not rely on Core Strategy Policy C1 as it was determined before the Council received legal advice that this policy could relate to housing mix. In addition up to date evidence on demographic and market trends was not available at that time as it is now for this appeal in the Knaresborough Housing Mix Report. The Council therefore considers that this case is not directly comparable to this appeal.

Reasons

11. The Planning Practice Guidance advises that costs may 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.
12. I note that the costs application was made on 24 October 2016 when the appeal was to be dealt with at a hearing. It appears to me that some of the points made in relation to unreasonable behaviour by the Council have been addressed in the Council's Statement of Case or in the witness statements submitted in February 2017.
13. In particular the Council has acknowledged the benefits of affordable housing in paragraph 7.3.4 of the Statement of Case and in paragraph 7.14 of Mr Wood's proof of evidence. The Council has also carried out a planning balance exercise in paragraph 7.3 of the Statement of Case and expands on this in paragraphs 7.11 – 7.24 of Mr Wood's evidence.
14. It is clear from the application for costs that there is significant disagreement between the parties over the relevance and weight to be attached to Core Strategy Policy C1, paragraph 50 of the Framework and the Council's SHMA.

¹ APP/E2734/W/16/3148175

² APP/R3650/W/15/3070006

15. In relation to CS Policy C1, the Council has acknowledged that the Core Strategy does not contain a specific policy on housing mix but has substantiated their view that Policy C1 is capable of being relevant to this matter. I have noted the Pateley Bridge appeal ³decision where the Inspector considered Policy C1 to be relevant. I do not therefore consider it unreasonable for the Council to take the view that Policy C1 is applicable to the appeal case.
16. With regard to paragraph 50 of the Framework, the Council has demonstrated in the submitted evidence how in its view this paragraph is relevant to the appeal, in particular with reference to the Pateley Bridge appeal decision. This confirmed with reference to paragraph 50 as well as CS Policy C1 and the SHMA that the Council may seek to control housing mix. Whilst I have agreed with the appellant that paragraph 50 relates to plan making, this does not mean that it was unreasonable for the Council to take a different view.
17. The Council recognises that the SHMA is an evidence based document and the figures contained within it should not necessarily be applied rigidly. I agree with the Council's position that the SHMA is a relevant material consideration. Whilst I attach less weight to this document than the Council, I do not consider the Council's reliance on this document to be unreasonable as it forms the only available evidence on housing mix at the District level.
18. In summary I consider that the Council has substantiated its suggested reason for refusal with reference to the above documents and policies and have explained the relevance of these to the appeal case. Whilst I have allowed the appeal, I consider that the Council has not prevented development that should clearly have been allowed having regard to the development plan, national policy and other material considerations. I do not therefore consider that the Council has behaved unreasonably in this regard.
19. Turning to the Ash Grove appeal decision, whilst there are similarities to the appeal case there are also differences. The Council has explained that in this case they did not rely on CS Policy C1 and at that time they had not prepared the Knaresborough Housing Mix to inform demographic and market trends. I therefore consider the Council were justified in their approach to this current appeal as there was new evidence that had not been tested. The issue of determining cases in a consistent manner does not therefore arise and I consider that the Council have not behaved unreasonably.
20. In conclusion I consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for award of costs is refused.

Helen Hockenhull

INSPECTOR

³ APP/E2734/W/16/3157795