Costs Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 12 May 2017

Costs application in relation to Appeal Ref: APP/P5870/W/16/3159137
The Thatched House Hotel, 135-139 Cheam Road, & 133 Cheam Road, Cheam, Sutton SM1 2BN

- 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 the Council of the London Borough of Sutton for a full award of costs against Churchill Retirement Living.
- The hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing buildings and redevelopment to form up to 30 one and two bed sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises[1] that, irrespective of the outcome of the appeal, 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.

3. As explained in the appellant's hearing statement, BCIS build costs have been used to ensure a consistent approach and the change in the build costs from the time of the planning application to the hearing statement reflects the changing rates between those times. Similarly, it is not unreasonable that sales values would also have changed in that period. In any case, the Council has subsequently agreed the build costs and the sales values in the Statement of Common Ground (SoCG) and it can therefore be assumed that it considers the revised figures to be reasonable.

4. The Council has also agreed the cost of the external works within the SoCG. In doing so it can be assumed that the Council has found the increased figure to be appropriate. Accordingly, whilst the Council may have incurred the expense of a viability specialist in arriving at that position, the appellant was evidently not unreasonable in presenting this figure.

5. The evidence provided by PH Warr and Chesters Commercial was provided with the appellant's hearing statement within the timetable for the hearing. The appellant has not therefore failed, in this regard, to adhere to deadlines.

[1] Paragraph: 030 Reference ID: 16-030-20140306

Moreover, using advice from parties that were not previously involved at application stage does not amount to unreasonable behaviour.

6. The agreement of previous issues of dispute during the course of the appeal, including the above items and the capitalisation rate of 4% on annual ground rent income, demonstrates a reasonable and collaborative approach by the appellant and the Council, as advocated by the PPG.

7. It will be seen from my decision that I agree with the appellant that a 20% developer return for risk is appropriate in the particular circumstances of the appeal proposal. It follows that I am satisfied that the appellant has provided sufficient evidence to support its position on this matter. Furthermore, it is clear that the evidence provided in the appellant's hearing statement, including the evidence from Chesters Commercial, did not change the Council's position on this matter and therefore the appeal in this regard, and any associated costs, could not have been avoided.

8. The appellant accepted that the letter from HSBC amounted to late evidence and this does amount to unreasonable behaviour. However, this is a short letter and it seems to me that in reality, there has been so little extra work involved in responding to it that it can be regarded as 'de minimis'. In any case, I have no substantive evidence that any additional expense has been incurred as a result of this unreasonable behaviour.

9. It will also be seen from my decision that the review mechanism provided within the appellants' Unilateral Undertaking (UU) and the overage style payment suggested by the Council would not, in the circumstances of the appeal proposal, accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in paragraph 204 of the National Planning Policy Framework. It therefore follows that the failure to include the Council's suggested review mechanism within the UU does not amount to unreasonable behaviour on the part of the appellant, as I would not have been able to take it into account in my decision.

10. No examples are provided by the Council of a lack of co-operation by the appellant in providing information or only supplying relevant information at appeal when it had been requested, but not provided, at application stage. Similarly no evidence has been provided of the appellant deliberately concealing relevant evidence.

Conclusion

11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

Richard S Jones

INSPECTOR