The Planning Inspectorate

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 Churchill Retirement Living Limited for a full award of costs against the Council of the London Borough of Sutton.
- 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. The essence of the appellant's case is that the LPA acted unreasonably in failing to take account of the sector specific factors relating to retirement housing, and failing to substantiate its case, when refusing to accept the appellant's evidence that a figure of 20% profit on Gross Development Value (GDV) should be applied when assessing viability.

4. However, the PPG[2] advises that the developer "*return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.*" The PPG[3] also explains that assessing viability requires judgements which are informed by the relevant available facts.

5. In this regard, it is evident from the Council's hearing statement, that it has considered the appellant's view that the development of sheltered housing has a different risk profile to general needs housing. The Council however,

[1] Paragraph: 030 Reference ID: 16-030-20140306
[2] Paragraph: 015 Reference ID: 10-015-20140306
[3] Paragraph: 004 Reference ID: 10-004-20140306

highlight what it considers to be a direct contradiction with the other evidence provided by the appellant that there is a significant forecast growth in the number of older people in the Borough whose housing requirement will not be met by the existing housing stock and that there is a significant level of unmet market demand for sheltered housing and therefore a need to provide the same. On this basis the Council consider that the appeal proposal is not a high-risk development and a lower, 17.5% profit is appropriate. This is not an unreasonable position to take and is one I wanted to explore at the hearing. Moreover, in support of its position, the Council provided a hearing statement from an independent chartered surveyor and registered valuer which examines in detail the sector risks identified by the appellant.

6. Whilst it will be seen from my decision that I have found against the Council on this issue, I do not consider that unreasonable judgement has been applied and I am satisfied that the Council's written and oral evidence has substantiated its reason for refusal in this regard. I acknowledge that the examples given at Table 3.2 of Appendix 1 to Appendix 5 of the Council's hearing statement, where a lesser profit has been accepted, relate to general needs housing, nevertheless, they are flatted developments that are Borough specific. The Council has not therefore acted unreasonably by using these examples in their evidence.

7. The appellant also alleges that the Council's approach is inconsistent with the approach it took when determining an application[4] made by the appellant to develop land at Denmark Road, Carshalton, where a 20% profit on GDV was accepted. The Council however say that this reflects a different point of time and the specific risks of a larger scheme. Again, although it will be seen form my decision that in overall terms I am not convinced that these factors warrant a significantly lower level of developer profit, the Council's position on this matter is not unreasonable in this case.

8. I accept that the Council did not agree the Statement of Common Ground (SoCG) in a timely manner and this does amount to unreasonable behavior. However, the Council did contribute to a signed SoCG being presented before the date of the hearing. Therefore despite the timing, this has not caused the appellant to incur unnecessary or wasted expense in the appeal process as this work on the SoCG would have had to have been undertaken.

Conclusion

9. 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

[4] Planning application Ref: C2014/70740/FUL