
Costs Decision

Hearing held on 9 May, 2017

Site visit made on 9 May, 2017

by Graham Chamberlain, BA (Hons) MSc MRTPI

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

Decision date: 5th June, 2017

Costs application in relation to Appeal Ref: APP/W0530/W/16/3162178 Hallmark Hotel, Land south of Huntingdon Road, Bar Hill, Cambridgeshire, CB23 8EU

- 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 Hallmark Hotels (Bar Hill) Limited for a full award of costs against South Cambridgeshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 40 residential dwellings across two sites comprising: 6, two storey houses and 27 apartments in 3 and 4 storey blocks, 47 car parking spaces and associated landscaping including the retention of part of the bund and provision of a play area on part of the hotel car park and other surplus space (Site 1); and 7, two storey houses served by 14 car parking spaces and associated landscaping on part of hotel staff car park and underutilised part of golf course (Site 2); New pedestrian access off Crafts Way and children's play area along with associated landscaping on land between Sites 1 and 2.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Hallmark Hotels (Bar Hill) Limited

2. The appellant's application for costs was submitted in writing and supplemented orally. It can be summarised as follows. The Council have acted unreasonably when applying bullet points 1, 2, 3, and 4 of Paragraph 049 of the Planning Practice Guide (PPG) as it failed to substantiate its first reason for refusal regarding the level of affordable housing relative to the anticipated build costs. In respect of the second reason for refusal the Council went against the advice of the Design Enabling Panel and Urban Design Officer without proper rational justification. The Council failed to consider the proposal in light of the presumption in favour of sustainable development and its benefits.
3. The Council also acted unreasonably in a procedural manner as it failed to properly consider the appellant's appendices prior to submitting its Statement of Case, submitted late evidence before the hearing and attempted to alter its case on the day of the hearing.

The response by South Cambridgeshire District Council (SCDC)

4. The response by SCDC was provided orally and can be summarised as follows. Members of the Council's planning committee were entitled to reach a different conclusion to their Planning Officers. The Council's concerns were articulated

clearly in the reasons for refusal. The Council did not object to the proposal as a matter of principle due to the five year housing land supply position. The concerns were articulated as a cost of the proposal relative to the low provision of affordable housing. There was clear regard given to the National Planning Policy Framework and the need for a balanced assessment. Affordable housing is an important part of sustainable development.

5. The design concerns of the Council are clear and these are the height, the necessity of a landmark building and that the proposal would intrude into a green and verdant area. The late evidence was submitted before the hearing opened and explained in a covering email. It was submitted in response to a revised appraisal prepared by the appellant and because the appellant's are now pursuing a scheme with no affordable housing. Mr Ousby was present at the hearing and was able to address any questions. The late evidence raised clear and legitimate queries. The reasons for refusal could not be addressed through planning conditions and followed established case law. The Council responded to the draft version of the Statement of Common Ground in a timely manner.

Reasons

6. Irrespective of the outcome of the appeal, the PPG states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for an award of costs to incur unnecessary expense in the appeal process.
7. The Council's first reason for refusal alleges that the anticipated build costs of the appeal scheme would be unnecessarily high and that this would result in an inadequate level of affordable housing. At the time of the committee meeting, the appellant had proposed an affordable housing level that would be the equivalent of 20% of the homes proposed but the Council considered more could be provided. Nevertheless, the Council have entirely failed to substantiate this proposition, which in any event is at odds with the independent review undertaken by Carter Jonas. The Council provided no figures to support its stance that the build costs were too high and made only vague references to those areas where savings could be made. Moreover, the Council were unable to state at what level the affordable housing should be provided or why it disagreed with the report by Carter Jonas.
8. The report prepared by Carter Jonas, alongside Mr Ousby's evidence and the Council's submissions on the necessity of the public art were sufficient to demonstrate that a 0% affordable housing level could not be justified. Nevertheless, its suggestion that an unspecified level of affordable housing beyond 20% of the homes proposed could be provided was vague and unsubstantiated and in this context amounted to unreasonable behaviour.
9. In respect of the second reason for refusal, the Council's Planning Committee went against the advice of the Council's Urban Design and Planning Officers. The Planning Committee are not bound by a professional recommendation and are entitled to depart from this based on their knowledge and planning judgment. However, this is not an unqualified right, as Members of a planning committee must be able to properly substantiate any concerns identified.
10. The scheme was presented to a Design Enabling Panel (DEP) on three occasions and was the subject of a design workshop which involved local

resident. This was not a hollow 'tick box' exercise as the engagement was early in the process and the scheme evolved through notable amendments to the point where it was ultimately endorsed by the DEP. By following a robust design process an element of objectivity can be introduced into the design assessment.

11. The National Planning Policy Framework states that regard should be had to the recommendations from a local design review panel. The recommendations of the panel were set out in the Planning Officer's committee report so it is likely that members of the planning committee would have had regard to them. However, this has not been made explicit and the Council's Statement of Case does not explain with any clarity why the Council did not follow the recommendations of the DEP. To simply set aside the recommendations of the DEP without adequate justification only serves to undermine and frustrate a design process advocated in the Framework. The Council also failed to robustly address the appraisal prepared by Townscape Solutions, which was submitted with the appeal.
12. However, the Council made reference to the anticipated impact of the bulk, scale and massing of the flats on the rural character of the area. Given the village context of the appeal site the nature and scale of a flatted scheme is a legitimate concern. The Council were also specific in its concerns being the height of the flats and the impact of the proposal on the belt of landscaping around Bar Hill, which was part of the original design concept for the settlement. The Council also correctly questioned the necessity of a landmark building at the appeal site. Whilst I do not agree that the site has a rural character due to the presence of surrounding development and the A14, the Council were entitled to conclude that the site contributes to the rural setting of the village. On balance, the Council's second reason for refusal was not unsubstantiated and therefore it was not unreasonable.
13. The Council undertook a planning balance in its Statement of Case and concluded that the alleged harm would significantly and demonstrably outweigh the benefits of the proposal. As such, the Council had regard to the Framework and the presumption in favour of sustainable development even though the totality of harm it identified lack sufficient substance. As such, the Council adequately approached this aspect of the decision.
14. Turning to the procedural matters. The Council submitted late evidence on the 27 April, 2017. This was well after the deadline for the submission of Statements of Case (SOC) set as the 9 March, 2017. The Council's explanation for this is that they had not received the appendices to the appellant's Statement of Case. Be this as it may, the Council only requested these on the 14 March, 2017 which was after it had submitted its SOC. In effect, the Council prepared and submitted a SOC without reference to the 42 appendices prepared by the appellant, which included updated viability information. If the Council had properly considered the appellant's submissions from the start date of the appeal then the missing information would have come to light earlier and could have been provided to the Council with sufficient time for it to provide comments within the timeframe or for an appropriate extension to be agreed. As such, this does not justify the late evidence.
15. The Council also suggested that the appellant's viability information had been altered due to a submission made on the 12 April, 2017. The amendments

were singular in nature and were an update to reflect revisions to the planning obligations, which the Council would have been aware of. This was not a significant amendment which would have necessitated the Council providing late evidence. Consequently, the revisions to the appellant's viability case did not justify the late evidence either.

16. I ultimately accepted the late evidence as it was relevant to my deliberations in respect of whether a 0% level of affordable housing would be consistent with the relevant planning policy. Nevertheless, the lateness of the evidence was unreasonable as it would have incurred additional costs in re-examining the matters raised. Moreover, the Council sought to submit this in defence of its first reasons for refusal only to subsequently withdraw it in respect of this matter at the hearing because it went outside the scope of the concerns raised by the planning committee. This would have resulted in the appellant's incurring costs preparing to address a matter that was ultimately withdrawn. Therefore, whilst Mr Ousby's evidence was relevant its late submission was unreasonable behaviour that incurred wasted expense.

Conclusion

17. My overall conclusion is that in this instance the Council acted unreasonably as it failed to substantiate its first reason for refusal. As such, the reason for refusal was unreasonable and the appellant's costs in addressing it, where separate from pursuing an argument that no affordable housing can be provided, were unnecessary. This unreasonable behaviour by the Council was compounded by procedural failings in the way it presented its case. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Paragraphs 47 and 49 of the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Cambridgeshire District Council shall pay to Hallmark Hotels (Bar Hill) Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the first reason for refusal and the Council's procedural failings that flowed from this; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to South Cambridgeshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Chamberlain,
INSPECTOR