
Costs Decision

Site visit made on 4 April 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 12 June 2017

Costs application in relation to Appeal Ref: APP/X2410/W/6/3162995 Essex Lodge, 194 Ashby Road, Loughborough, Leicestershire LE11 3AG

- 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 Mr Mark & Liam Schofield for a full award of costs against Charnwood Borough Council.
 - The appeal was against the refusal of planning permission for development described on the application as '*Application for extension to existing student halls (currently 15 rooms) to provide 3 new cluster apartments (1x6, 1x4, 1x3 bed), and for separate building to provide 4 new cluster apartments (1x4, 1x5, 1x6, 1x7 bed). In addition to include 1 warden apartment within existing building (resulting in loss of 1 student room)*'.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹. Examples of substantive unreasonable behaviour referred to in the PPG include:
 - (a) *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;*
 - (b) *failure to produce evidence to substantiate each reason for refusal on appeal;*
 - (c) *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and*

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

(d) requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations.

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 required the Council to determine the application in accordance with the development plan unless material considerations indicate otherwise. A key issue in assessing the costs claim is whether the Council discharged this duty in a reasonable manner.
5. Saved policy H/12 of the Borough of Charnwood Local Plan (BCLP) 2004 indicates, amongst other things, that planning permission will be granted for proposals such as that subject to appeal at locations which are readily accessible by cycle, public transport or on foot to the university and college campuses. The appeal property is clearly in such a location.
6. The Council's reason for refusal relies heavily on the threshold mechanism in its 'Student Housing Provision in Loughborough' Supplementary Planning Document (SPD) 2005, under which planning permission will not be granted for proposals such as that subject to appeal where this would result in more than 20% of households in the area comprising 'student households'. However, whereas the adopted development plan contains clear support for limiting the concentration of Houses in Multiple Occupation (HMOs)² it contains no equivalent support for limiting the concentration of purpose built student accommodation such as that subject to appeal.
7. The Council decision claims that the proposal would conflict with the intentions of saved policy EV/1 of the BCLP and policy CS2 of the Charnwood Local Plan Core Strategy (CLPCS) 2015. However, neither of these policies offer any support for the threshold approach in the SPD. No conflict with any other development plan policy has been identified.
8. Furthermore, it appears to me that many of the issues typically associated with HMOs could not reasonably be applied to the appeal proposal. For example, the appeal proposal would clearly not lead to any loss of existing housing for the settled community. As the site is already used as student accommodation the proposal would not lead to any additional abandonment outside term time. Unlike most HMOs, the proposal would include an on-site warden to help address issues such as noise and waste management.
9. Having regard to the points set out above, and the advice in the PPG³ that the role of SPDs is to '*...build upon and provide more detailed advice or guidance on the policies in the Local Plan ...*', it appears to me that the Council attributed unreasonable weight to the threshold mechanism in the SPD in its decision.
10. In my appeal decision I acknowledge that, based on the evidence provided by different parties, there is a problem of student related noise and anti-social behaviour (ASB) in the general area of Ashby Road. In making its decision, the Council justifiably took into account the representations of interested parties concerning this matter. However, the objective evidence relied upon by the Council concerning ASB⁴ is, of its own admission, of limited value in quantifying the numbers and types of such incidents close to the appeal site. Furthermore, the Council's concerns appear to relate to the overall concentration of students

² Policy CS4 of the Charnwood Local Plan Core Strategy (CLPCS)

³ Paragraph: 028 Reference ID: 12-028-20140306

⁴ Evidence provided by the Community Safety Team

in the area. It has submitted no firm evidence to substantiate its fears that the appeal proposal itself would cause material harm.

11. The Council has provided examples of other cases where Inspectors have dismissed appeals for HMOs. However, as stated earlier such proposals are subject to a different development plan policy background and material considerations from those which apply to the appeal proposal. The decisions provided, and the SPD itself, do not provide substantive evidence that the current appeal proposal would be unacceptable.
12. I agree that the scheme subject to planning permission P/16/2558/2 for the erection of student accommodation to provide 617 bed spaces within the university campus is materially different to that subject to appeal. However, that proposal would substantially increase student numbers living in the area close to the appeal site. It would also be likely to increase the coming and going of students along Ashby Road for evenings out in the town centre. The Council's evidence fails to adequately substantiate why it considers the appeal proposal to be unacceptable in these respects.
13. The Council has insisted that the requirement to submit and implement a Student and Parking Management Plan (SPMP) must, if the appeal is allowed, be covered by a planning obligation under Section 106 of the Planning Act rather than a condition. I agree that it is important that a suitable SPMP is implemented. However, the Council has provided no substantive argument to demonstrate why this matter cannot be covered by condition. Taking account of the advice in paragraph 203 of the Framework its approach to this matter is also unreasonable.
14. In summary, I conclude that the Council's decision placed an unreasonable emphasis on the 20% threshold in the SPD when this is not justified by adopted development plan policy. It has also failed to provide sufficient evidence to substantiate its reason for refusal and unjustifiably insisted that the appellants enter into a planning obligation. Its actions have directly caused the appellants to incur unnecessary or wasted expense in the appeal process.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Charnwood Borough Council shall pay to Mr Mark & Liam Schofield, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicants are now invited to submit to Charnwood Borough 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.

Jonathan Clarke

INSPECTOR