

Costs Decision

Hearing held on 25 May 2017

Site visit carried out on 25 May 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 28 June 2017

Costs application in relation to Appeal Ref: APP/X2410/W/16/3163501 Land off Cropston Road, Anstey, Leicestershire LE7 7GG

- 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 Bloor Homes Limited, Cynthia Spence and Nicholas Wells for a full award of costs against Charnwood Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for reserved matters including layout, scale, appearance and landscaping as required under Condition 2 of the Outline planning permission. Submitted details also seek to discharge conditions 5, 11, 12, 13 and 20 of that same permission.
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Decision

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

The submissions for Bloor Homes Limited, Cynthia Spence and Nicholas Wells

2. A costs submission was made in writing before the Hearing. At the Hearing the applicants confirmed that their application still stands and additional points were added orally including reference to the Planning Policy Guidance and costs decision APP/Q3305/W/15/3137574 copies of which were submitted at the Hearing.
3. The applicants seek a full award of costs. In essence, it is submitted that the Council has behaved unreasonably and caused the applicants to incur unnecessary expense in undertaking the appeal, preparing the appeal documentation and attendance at the Hearing.
4. The applicants contend that it is not within the power of the Council to refuse a reserved matters application on the basis of housing mix and therefore the reason for refusal is unreasonable, contrary to a range of appeal decisions taken in relation to this matter and contrary to advice given by officers during the assessment of the application. Furthermore, the second reason for refusal is unclear in scope and explanation. Moreover, the issue at conflict in relation to materials could have been appropriately addressed through the imposition of a condition.

The response by Charnwood Borough Council

5. The Council had submitted a response in writing before the Hearing. It responded at the Hearing to the additional information supplied by the
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applicant. The Council considered that the case law it had submitted demonstrates the ability of the Council to consider housing mix at reserved matters stage. Furthermore, the second reason for refusal was clear and explained thoroughly within the Council's statement and at the Hearing.

Reasons

6. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
7. The Council's Planning Committee decided to refuse the application contrary to advice of their professional officers. Authorities are not bound to accept the recommendations of their officers, but at the Hearing the applicant drew my attention to paragraph 049 of the PPG which states that local planning authorities are at risk of an award of costs if they act contrary to or do not follow well established case law, do not determine similar cases in a similar manner and refuse to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage.
8. With regards to the first reason for refusal, in my decision I have found that the conditions attached to outline planning permission P/14/0428/2 do not require the agreement of an appropriate mix of housing at the reserved matters stage. However, the Council have in this instance put forward case law which it considered would justify the inclusion of the consideration of housing mix within the reserved matters of scale and appearance. This is case law that was not in front of other Inspectors when they reached the decisions which were referred to me by the applicants. I am satisfied therefore that although I have reached a different conclusion to the Council, it advanced a case, with evidence, that, in its opinion, indicated that housing mix could reasonably be considered within the submitted reserved matters.
9. I have had regard to Costs decision APP/Q3305/W/15/3137574 where the Inspector allowed a costs application. In the decision he found that as the Council could not reasonably consider the housing mix under the terms of the reserved matters then the Council had acted unreasonably. I am not aware of the extent of the evidence prepared by the Council to defend its reason for refusal in that instance. However, I have been advised that the Inspector was not party to the case law that has been presented in this case. I am satisfied therefore that the two cases are sufficiently dissimilar for me to reach a different decision.
10. The second reason for refusal contained two elements. Firstly, that the building materials would not be typical of those in the area and secondly the lack of integration of the affordable housing with the market housing across the site.
11. The effect of a proposed development on the character and appearance of an area is a relatively subjective matter, often determined by an exercise of judgement in the particular circumstances of the case. The Council explains in its statement that the building material relates to the use of timber boarding and that such material would not be typical of the area. In this regard therefore the Council's case is clear. I saw at my site visit that this was the case, and while the Council's case is limited in this regard, given the subjective nature of

the assessment I find it reasonable that the Council came to the conclusion that the proposal would conflict with Policy CS2 which requires that development respect and enhance the local character having regard to materials. As there were other issues in dispute, it was not open to the Council to resolve the matter through the imposition of a condition requiring details of materials.

12. The Council's statement expands on the part of the reason for refusal relating to the integration of the affordable housing across the site, together with reference to Building for Life 12 and its recently adopted Housing Supplementary Planning Document 2017. As a result the Council's concerns about the integration of the affordable housing are very clear and I have, in my decision, agreed with those concerns. I do not consider therefore that it has acted unreasonably in this respect.
13. I considered other housing layouts that were drawn to my attention and how the distribution of affordable housing has been treated in those schemes by the Council. However, based on the information supplied to me, I could not be sure that circumstances which resulted in the approval of the other layouts were so similar to those on the appeal scheme to justify it being treated in a similar manner.
14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR