



Costs Decision

Hearing Held on 26 July 2017

Site visit made on 26 July 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 21 August 2017

Costs application in relation to Appeal Ref: APP/X3025/W/17/3172241 Factory, Victoria Street, Mansfield NG18 5RW

- 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 Chera Developments for a full award of costs against Mansfield District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for the conversion of existing mill building into 24 No. of flats and construction of 44 No. of Flats within 2 No. of blocks
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Decision

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

Reasons

2. 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 costs to incur unnecessary expense in the appeal process.
3. The application for the award of costs was submitted in advance of the appeal hearing and a response from the Council was given during proceedings on the day. The crux of the applicant's case relates to substantive grounds, specifically that they consider the Council has acted unreasonably by not providing sufficiently sound justification for the decision that was taken.
4. The Council's planning officers recommended approval of the appeal scheme to their elected ward members who decided on a course of action contrary to that recommendation. Whilst this is not an unusual situation and is indeed part of the democratic process under local planning authorities' adopted schemes of delegation, members are required to offer clear justification on relevant planning grounds in the same way officers would be if that recommendation was to refuse planning permission.
5. At the hearing I heard evidence from the Council as to the reasons for the decision contrary to officers' advice. With regard to the matter of car parking provision, there was concern that the number of provided spaces set against the number of apartments was disproportionate and would lead to parking on the street.

6. My findings on this matter aside, these concerns relevant to a potential direct effect of the appeal scheme. The Council cited existing on street parking problems, the views of local residents and local highway conditions more generally in support of their case. Whilst members clearly disagreed with officers and the more specialist advice from relevant advisors at Nottinghamshire County Council, they did so with regard to legitimate concerns as well as in the limited and somewhat vague relaxation guidance provided by an adopted supporting planning document. Members' view on this matter was therefore one of subjective planning judgement.
7. Consequently, I am not persuaded that the Council has acted unreasonably in this respect. The cases I heard from both the appellant and the Council cited evidence and this was necessary and relevant to the appeal proceedings on the day.
8. On the matter of developer contributions, the concern for the Council was that the proposed development would be unsustainable without them. This was in the face of a detailed and focussed viability appraisal that was submitted by the appellant and independently reviewed. Whilst the findings' final amounts varied, both the appraisal and the review confirmed that the appeal scheme would be unviable if contributions were sought. Drilling down, it was evident that the Council's main concern was the pressure on local schools and when pressed on the matter, the Council were unable to provide any detailed corroborative evidence.
9. With regard to this main issue alone therefore, I am of the view that the Council have provided a reason to refuse planning permission without a suitably robust justification. The one offered was vague and generalised in the face of evidence to the contrary was strong and substantial. In essence, it should not have been a matter before me as part of the appeal. This behaviour has, for this reason, been unreasonable with specific regard to paragraph 049 of PPG¹.

Costs Order

10. 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 the Mansfield District Council shall pay to Chera Developments, a proportion of 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.
11. The applicant is now invited to submit to Mansfield 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.

John Morrison

INSPECTOR

¹ failure to produce evidence to substantiate each reason for refusal on appeal ID:16-049-20140306