



Costs Decision

Hearing Held on 1 August 2017

Site visit made on 1 August 2017

by Mrs S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 6th September 2017

Costs application in relation to Appeal Ref: APP/J3530/W/17/3171875 Norwood House, Littlemoor Lane, Middleton IP7 3JZ

- 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 Gareth Nixon-Moss of County Care Homes Ltd for a partial award of costs against Suffolk Coastal District Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the erection of 14 sheltered/extra care dwellings, together with residents lounge/meeting room and parking area.
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Decision

1. The application for costs is refused.

The submissions for Mr Gareth Nixon-Moss

2. The costs application was submitted in writing prior to the hearing, at the heart of which was the appellant's view that the Council had failed to take account of the need for the proposed facilities and the functional connection with the existing care home. Furthermore, the Council had not been willing to consider conditions or a S106 agreement as a means of overcoming their 'in principle' objection, which was based on the location of the proposal in the countryside. He was also critical of the manner in which the decision had been delegated to officers.
3. Mr Nixon-Moss expanded on these concerns orally at the hearing. In his view the Council's insistence on determining the application as a 'C3' use, its failure to consult the County's Social Services and its unwillingness to meet, discuss or negotiate, amounted to unreasonable behaviour. The offer of pre-application advice prior to a re-submission did not offer an acceptable way forward given the Council's approach to the appeal scheme. He had used the service in the past but had not found it helpful.

The response by Suffolk Coastal District Council

4. The Council responded in writing to confirm that the decision had been made in accordance with its agreed scheme of delegation. The Council had an objection in principle to housing of any kind on the appeal site arising from its conflict with the development plan, which seeks to strictly control development in the countryside. It therefore considered there was little to be gained by attempting to enter into discussions or negotiations. In the Council's view a Section 106 agreement could not be used to make the development acceptable.
5. At the hearing the Council gave more details about its pre-application advice service, which is subject to charges. Whilst it was the appellant's choice not to use

this service, he could not expect to receive an equivalent level of advice through an exchange of emails.

Reasons

6. The 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.
7. The Council refused the application for two reasons. However, the application for costs was only concerned with the first reason, relating to the location of the proposed development.
8. From the outset the Council considered and assessed the application as though it was for housing that would be capable of independent occupation and available on the open market. There is a clear presumption against new general housing in the countryside in both national and local policy. The location was therefore considered unsuitable due to its location outside any defined settlement. The Council was not unreasonable in adopting that approach; it was for the applicant to justify an exception to these policies.
9. The information submitted in support of the application highlighted the need for providing for the needs of the elderly and the advantages of locating accommodation close to Norwood House. However, whilst reference was made to 'extra care housing', where tenure rights included agreements with a provider for care, elsewhere there were simply references to older people, those over 55 and those in the very early stages of a degenerative illness. The initial information submitted suggested that occupants would have a reasonable degree of independence and would still travel elsewhere to meet many of their day-to-day needs.
10. On the basis of this information, the Council was unconvinced about the need for the sheltered housing and understandably concerned about who would occupy the 'dwellings'. At that stage no clear or enforceable means of effectively restricting ownership to those with a genuine need for a functional relationship with Norwood House, or the services it has to offer, were put forward. The Council therefore did not act unreasonably in refusing the application. I am satisfied that its decision was taken in accordance with its approved scheme of delegation.
11. The appeal could not, therefore, have been avoided. The Council provided evidence to support its decision during the appeal process and did so in a timely manner. However, as a result of additional evidence and what was discussed at the hearing, I found there were significant material considerations that weighed in the scheme's favour. This led me to conclude that the circumstances justified an exception to the Council's general policies on the location of housing, subject to appropriate conditions and a planning obligation. However, it does not follow that the Council acted unreasonably or that the appellant incurred unnecessary or wasted expense in pursuing the appeal.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Sheila Holden

INSPECTOR