The Planning Inspectorate

Costs Decision

Site visit made on 22 January 2018

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2018

Costs application in relation to Appeal Ref: APP/D0840/W/17/3183739
Land adjacent to Cassacawn Road, Bisland PL30 4JF

- 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 Cornwall Council for a partial award of costs against Kearnswear Ltd.
- The appeal was against the refusal of outline planning permission for the erection of 12 dwellings to include 6 affordable dwellings.

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The application is made on the basis that the appellant's approach to the provision of affordable housing was contrary to Policy 9 in the Cornwall Local Plan Strategic Policies (the LP). The application is made only in relation to the costs incurred by the Council in dealing with this issue. The appellant company has not provided any response to the costs application.

4. The PPG indicates that appellants' will be at risk of an award of costs against them if the appeal had no reasonable prospect of succeeding. It cites a specific example where the development is clearly not in accordance with the development plan, and no other material considerations, such as national policy, are advanced that indicate the decision should have been made otherwise, or, where other material considerations are advanced, there is inadequate supporting evidence.

5. The appeal development was primarily advanced on the basis that it would be a rural exception scheme. Policy 9 of the LP allows for the development of sites outside but adjacent to the existing built up area of a settlement, where the primary purpose is to provide affordable housing to meet local needs. The Policy is clear that the inclusion of market housing is only supported where it is essential for the successful delivery of the development based on a detailed financial appraisal. The Policy also states that the market housing must not represent more than 50% of the homes. The supporting text is also clear that schemes should work from a base position of 100% affordable housing and this proportion should only be decreased with the needs of achieving viability.

6. The description of the development given on the application form was for the provision of six of the twelve dwellings as affordable housing. Although this is not definitive, it does give an indication that the appellant company has viewed the starting point as only providing half of the dwellings as affordable housing. A draft planning obligation has been submitted which would secure at least 50% of the housing as affordable with the exact level to be agreed at the reserved matters submission and subject to viability. Wording has been added to suggest that this should work backwards from 100%. The obligation has not been completed and the related correspondence indicates that the final wording has not been fully agreed between the parties. I could therefore only take the wording of the agreement as an indication of what the final version may have contained.

7. No viability information was submitted. The appellant's justification for this is a suggestion that a meaningful assessment of viability cannot be made when many elements of the scheme have not been finalised. Viability appraisals submitted with outline applications is not uncommon. The appellant has not provided any evidence that there are any circumstances that would make assessing the viability of the scheme at the outline stage unusually problematic. There is nothing within Policy 9, or its supporting text, which would support viability testing only at the reserved matters stage.

8. The sole purpose of a rural exception scheme is to provide affordable housing. Small numbers of market houses may form part of such a scheme where it is essential to enable delivery. In this context not seeking to address the viability at the outset and identify how much, if any, market housing is necessary to enable delivery is counter to the requirements of Policy 9 of the LP as well as the principles for rural exception sites set out in the National Planning Policy Framework.

9. The appellant's approach is clearly not in accordance with the development plan. The material considerations advanced to justify taking a different approach has not been supported by adequate evidence. On this basis the appeal had no reasonable prospect of succeeding. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

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 Kearnswear Ltd shall pay to Cornwall Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the affordable housing issue and the application of Policy 9 of the LP; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Kearnswear Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Taylor

INSPECTOR