



Costs Decision

Hearing Held on 21 March 2018

Unaccompanied site visits made on 20 & 21 March 2018

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Monday 30th April 2018.

Costs application in relation to Appeal Ref: APP/R0660/W/17/3180593 Land to the north of Little Heath Barns, Audlem Road, Audlem CW3 0HE

- 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 McCarthy & Stone Retirement Lifestyles Ltd for a full award of costs against Cheshire East Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of retirement living housing (category II type accommodation), communal facilities, landscaping and car parking.
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Decision

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

The submissions for McCarthy & Stone Retirement Lifestyles Ltd

2. A costs submission was made in writing before the Hearing. At the Hearing the applicant confirmed that its application still stands and additional points were added orally including reference to the Council's refusal of a duplicate planning application ref 17/5776N, within which the applicant had formally offered a sum of £305,000 as a contribution towards affordable housing and medical infrastructure. This figure matched that suggested by the Council's experts in their assessment of the viability of the proposal. Members of the Council had made a decision contrary to officer recommendation with no evidence to support their assertion that the appeal proposal could support a higher level of contribution. The appeal would not have needed to have gone ahead if the application had been granted.
3. The applicant seeks a full award of costs. In essence, it is submitted that the Council has behaved unreasonably and caused the applicant to incur unnecessary expense in undertaking the appeal, preparing the appeal documentation and attendance at the Hearing.
4. The application the subject of this appeal was originally presented on the agenda for the Planning Committee on 5 June 2017, with a recommendation to approve. The applicant contends that the Council was unreasonable in advising the applicant at very short notice prior to the Committee meeting that the recommendation would be changed to one of refusal if the applicant did not withdraw the application to allow further negotiation regarding the financial contribution. Subsequently, the Director of Planning & Sustainable

Development (DPSD), who had ordered the change of recommendation, would not meet with the applicant to discuss the matter. Furthermore, the Council did not attach appropriate weight to the delivery of specialist forms of accommodation for older persons as outlined in the objectives of the National Planning Policy Framework and the Planning Policy Guidance (PPG).

The response by Cheshire East Council

5. The Council had submitted a response in writing before the Hearing. It responded at the Hearing to the additional points made that Members were of the opinion that if the applicant was able to afford to contribute £305,000 even though the viability assessment demonstrated only a lesser amount, then a greater amount should be forthcoming. The Council explained that at the time of the original report to Committee that the case officer attached substantial weight to the fact that the Council was not able to demonstrate a five year housing land supply. Therefore, the benefit of providing older person's accommodation outweighed any harm caused by not providing an acceptable financial contribution. This view was not shared by the DPSD, who gave significant weight to the emerging Cheshire East Local Plan which, when adopted, would demonstrate the Council could evidence a five year housing land supply. Therefore, the significant harm of not providing an adequate financial contribution was not outweighed by the benefits. Furthermore, the DPSD did meet with the applicant on the 11 September 2017.

Reasons

6. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. It is regrettable that the Council left it until a very short time before the Planning Committee meeting to advise the applicant that the recommendation to the Planning Committee would be changing. Furthermore, there was three months between the Committee meeting and the meeting between the DSD and the applicant. Nevertheless, when the Planning Committee considered the application at its meeting on 9 August 2017, after the submission of this appeal, the Council was confident that the proposal could achieve a financial contribution of £556,699 based on its independent experts report. I do not find it unreasonable therefore that the Council found that the shortfall in the level of contribution had not been adequately justified, and were minded to refuse the application on this ground if they had been in a position to determine it.
8. I would agree with the applicant that a shortfall in a contribution towards off site infrastructure and affordable housing, if adequately justified by a robust viability study would not be a dis-benefit of the scheme, but instead would mean that the proposal would be policy compliant. Nevertheless, irrespective of the wording of the officer report to Committee, this approach is reflected in the Council's suggested reason for refusal.
9. The report to the 9 August 2017 Planning Committee also refers to the benefits of the provision of housing for the elderly to meet a national shortfall. As weight is to be applied by the decision maker, I am satisfied that this benefit was considered by the Council.

10. Since that time the situation has changed, particularly with regard to the scheme to be used on the appeal site for the purposes of the benchmark site value. Furthermore, discussions continued between the parties. As a result, the level of contribution that the Council's experts considered reasonable has reduced to £305,000 based on evidence put forward at the hearing. 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 a contribution of £305,000 could be achieved, and therefore in this respect did not act unreasonably.
11. I am advised that the Council has refused the duplicate planning application ref 17/5776N which included a contribution of the sum of £305,000. However, that application is not the subject of the appeal before me now. Therefore, I cannot take the behaviour of the Council in its determination of that application into account.
12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, in respect of the appeal proposals before me, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR