



Costs Decision

Hearing Held on 22 March 2018

Site visit made on 22 March 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 May 2018

Costs application in relation to Appeal Ref: APP/M0655/W/17/3181024 Payne Brother Co, 20 Beatrice Street, Latchford, Warrington WA4 1DR

- 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 D Payne, Payne Bros UK Ltd for a full award of costs against Warrington Borough Council.
 - The hearing was in connection with an appeal against the grant subject to conditions of outline planning permission for development described as "*Outline Planning (Major) - Outline application for the construction of 4, two-bedroom houses and 14, three-bedroom houses including ancillary parking (matters of appearance, layout, access, and scale to be considered) (landscaping is a reserved matter)*".
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Decision

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

The submissions

2. The appellant's costs claim was made in writing before the hearing. The appellant's claim is essentially that errors in the District Valuer Services' (DVS) initial report [at the time the Council were considering the application] caused additional expense both during the consideration of the planning application and, in preparing viability information, the subsequent appeal.

Reasons

3. 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 costs to incur unnecessary or wasted expense in the appeal process.
4. Whilst the appellant has set out costs which he considers to have been wasted only some of these relate to the appeal as opposed to the planning application. The DVS accepted that some errors had been made in their initial evaluation of the appellant's Viability Assessment when they were brought to their attention and subsequently carried out a further, corrected evaluation without a fee to the appellant. The DVS's evaluation of the number of affordable homes that the development could support and remain viable changed from three to two. However, this showed that the Council were responsive to the circumstances and in any event this occurred during the consideration of the application not at the appeal stage.

5. The appellant advised that they were unhappy with the DVS reports but nevertheless confirmed that they would be prepared to accept the cost of two affordable homes (as well as the cost of highway works not in dispute) and provided a drawing indicating the affordable units. The Council subsequently granted planning permission subject to conditions including one requiring a scheme for the provision of the affordable homes. That the appellant subsequently decided to appeal against that condition does not demonstrate that the Council acted unreasonably in attaching it given the circumstances.
6. Although there were a number of extensions of time during the consideration of the application, from the information provided these were agreed between the parties with an explanation provided to enable provision of requested information or the evaluation of viability information. There were substantive reasons given to justify delaying the determination of the application and in any event planning permission was subsequently granted.
7. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal proceeding. There is no evidence to suggest that the Council behaved unreasonably during the appeal process. Whilst behaviour and actions at the time of the planning application can be taken into account, the actions of the Council during the consideration of the planning application, particularly in requiring the provision of affordable housing which the appellant at the time agreed to, cannot be considered to be of an unreasonable nature and in any event no unreasonable behaviour has been demonstrated during the appeal.
8. The PPG sets out an example of unreasonable behaviour as imposing a condition that does not meet the National Planning Policy Framework 'tests'. However, I found that the condition which was the subject of the appeal met these and the Council did not behave unreasonably by attaching condition 18 to the planning permission in this respect.
9. The Council exercised their duty to determine the planning application in a reasonable manner, circumstances the PPG advises that they should not be liable for an award of costs. I find that unreasonable behaviour in the appeal process by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore that an award of costs is not justified.

Geoff Underwood

INSPECTOR