



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 Warrington Borough Council for a full award of costs against Mr D Payne, Payne Bros UK Ltd.
 - 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 Council's costs claim was made in writing, and the appellant replied in writing, before the Hearing. The Council added orally at the Hearing that they did not consider the appellant's letter of 16 March 2017 (sic) to be a rebuttal of their claim for costs as it addressed matters concerned with the merits of the appeal and the appellant's own costs application.
3. The Council's claim is that the appeal had no reasonable prospect of succeeding and that, were the condition not attached, the development would clearly not be in accordance with the development plan.

Reasons

4. 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.
5. The PPG advises that an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. It gives an example that this may occur if the development is clearly not in accordance with the development plan, and that no other material considerations are advanced that indicate the decision should have been made otherwise, or that where material considerations are advanced, there is inadequate supporting evidence.

6. The appellant agreed to provide affordable housing and this is what the condition in contention requires. It may be unexpected that he then appealed against that condition given his explicit agreement to it at the time (albeit expressing disapproval with the reports on which the Council based its approach), but this does not in itself amount to unreasonable behaviour.
7. A development plan policy¹ sets out requirements for affordable housing but includes circumstances where lower than its standard percentage may be acceptable and that each case will be based on negotiation and agreement on a site by site basis. It sets out that a demonstration that development would not be financially viable is necessary for a lower proportion to be acceptable.
8. I found that, on the basis of the evidence provided, the development would not have been in accordance with the development plan in this respect without the condition requiring affordable housing. However, the assessment of the scheme's viability with affordable housing is one requiring detailed appraisals of a range of development costs and values as well as the exercise of professional judgement. I found that the appellant had not demonstrated that the condition should be removed. Nevertheless, the issues at appeal were not so clear cut that the development would have been clearly not in accordance with the development plan and the appellant provided material and some evidence to support his position. In particular there is no evidence that the appellant's behaviour during the appeal process itself was unreasonable.
9. That the appellant himself has made an application for costs against the Council does not amount to unreasonable behaviour.
10. I find that unreasonable behaviour by the appellant 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

¹ Warrington Borough Council Local Plan Core Strategy, 2014 – Policy SN 2.