The Planning Inspectorate

Costs Decision

Inquiry Held on 2-4 July 2019

Site visit made on 4 July 2019

by Elizabeth Hill BSc(Hons) BPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2019

Costs application in relation to Appeal Ref: APP/F1610/W/18/3217581 Land to the east of Chapel Close and the west of John of Gaunt Road, Kempsford

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by J A Pye (Oxford) Ltd for a full award of costs against Cotswold District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 62 dwellings (50% affordable), formation of emergency access, associated landscaping and ancillary works.

Decision

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

The submissions for J A Pye (Oxford) Ltd

2. The submissions were made in writing. The applicant used Circular 03/2009 Costs Awards in Appeals and other Planning Procedures to make their case, which has been superseded by the Costs section of the Planning Practice Guidance (PPG). I have used the relevant paragraphs of the PPG to determine the application. In summary, the grounds were that the Council's actions undermined the applicant's case at the inquiry by:

   a) Giving only 3 days' notice before the exchange of proofs, that they would make a new case materially different to that in the Statement of Case (SoC);

   b) Their proofs raising multiple new issues beyond the expanded reason for refusal to reasons which could be resolved by the imposition of conditions; and,

   c) Their proofs contradicting two concessions made in the Statement of Common Ground (SoCG) and, one day before the inquiry mentioned the Council, having already agreed the house types in the SoCG, argued that they were deficient in terms of sizes.

The response by the Council

3. The responses were also made in writing. In summary the response was:

a) The Council had given notice of the Local Plan (LP) policies that it was relying on in good time and no further time was needed at the inquiry to discuss the case;

b) The issues raised by the Council were clearly related to Reasons for Refusal 1 and 3 and could not have been resolved through the use of planning conditions; and,

c) The matters at issue were already raised in the SoCG and the issue about house sizes arose during discussion on the S106 agreement and was subsequently resolved.

Reasons

4. 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.

5. In terms of the first issue, the applicant cites examples of unreasonable behaviour by the Council. These are set out in the PPG at paragraph 16-047-20140306 as prolonging proceedings by introducing a new ground of appeal and at paragraph 16-049-20140306 which requires Councils to review their cases promptly on appeal. Once the Council's consultant had been appointed the case was reviewed and the Council advised the applicant on 12 April 2019 that they intended to look at the development strategy in the LP as a whole, with Policies DS1-DS4 specifically mentioned. The Council then developed a case against the proposal using both DS3 and DS4 in its proof. Whether the site was inside the village (a non-principal settlement) or outside the village in the countryside was a matter of planning judgement, as agreed by the main parties, and by extension, so was the policy to be used in this case.

6. Exchange of proofs was due on 4 June 2019 and, in order to address the applicant's concerns about new evidence, I allowed further time, over 2 weeks, for the applicant to submit their proofs to address the further points raised, so that their case would not be prejudiced. Given the amount of time given to the applicant to address the Council's new evidence on DS4, it forms only a short section of the proof, which does not suggest that significant money and resources were spent on this matter. There was discussion of whether the site lay inside or outside the village at the inquiry but the criteria in Policy DS3 also seek to examine the relationship of a site to an existing village and therefore some of this material would have been examined at the inquiry in any event. Therefore, I do not consider that the inquiry was prolonged and, in fact, it finished one day earlier than the allotted time for it and no adjournments were necessary during the inquiry for the applicant to consider any new material in front of them.

7. On the second matter, in their proof, the Council sought to address whether the tests in Policy DS3 were met by the proposal, as required in the LP text at paragraph 6.3.7. These are not expanded on in reason for refusal one and the SoC, but since the policy requires the relevant tests to be satisfied, it was to be expected that the Council would go through them in turn. The relationship to higher order settlements is commented on in paragraph 6.3.4 of the LP and has relevance in the arguments about the role of Fairford and Cirencester and the applicant's proposed enhancement to the bus service.

8. In consideration of reason for refusal 3, the wording mentions the relationship of some of the proposed houses to their boundaries, a point developed in the applicant's proof. What the applicant's approach fails to address is whether the position of some of the proposed houses on their plots complies with the overall window to window distance of 22m set in the Cotswold Design Guide to preserve privacy, in situations where some of the surrounding properties have short garden lengths. Where these do not meet the 22m distance, it is necessary to look at the boundary treatment required in mitigation for the loss of privacy and the impacts of that mitigation. The time spent on these matters at the inquiry was significantly reduced by taking the details of the impact on each of the affected existing dwellings as read and very little time was spent on these matters in cross-examination and re-examination. The applicant's evidence was largely based on the distance to boundaries, referring to the plots mentioned in the decision notice plus Plots 33 and 34, which had been agreed in the SoCG.

9. However, noise and disturbance was not mentioned in the third reason for refusal nor was the management of the landscaped areas. The issue of noise and disturbance from vehicle movements near to existing dwellings was a minor point by the Council, dealt with in one sentence in their proof. The latter point on landscape management is covered in a suggested condition about the landscape and ecological management plan. However, these issues are minor and do not go to the heart of the decision, being picked up as other matters, which took very little time at the inquiry.

10. The applicant claims that these matters could have been dealt with by conditions. However, paragraph 016-049-20140306 states that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. The applicant indicates that the Officer's Report on the planning application said that boundary treatment could be dealt with by condition. This was true of its urban design implications of the boundary treatment (section (g) of the report) and its management, which is covered by a suggested condition.

11. However, the impact on the living conditions was not considered until section (i) of the report, where it was reported that details of the boundary treatment had been requested but had not been submitted. An illustrative plan showing boundary treatment was submitted to the Council on 30 May 2019 and raised a number of issues relating to living conditions. As such, I consider that this matter could not have been covered by conditions but required examination at the inquiry. The relationship of proposed dwellings to existing ones is a planning matter and the applicant's planning witness was able to address these issues. It was not necessary for an additional witness to be called. The inquiry was not prolonged by these matters and, as already stated, finished earlier than expected.

12. The final matter relates to matters agreed in the SoCG. Paragraph 016-048-20140603 of the PPG says that not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties can result in an award of costs. The SoCG was agreed but the applicant now says that it was agreed that the objections to the proposal are set out in reason for refusal 3 and that there were no other objections on residential amenity grounds, other than privacy. The matter of privacy and the

impact of the mitigation for its loss has been dealt with above. I consider that the Council did not go beyond its reason for refusal 3 or what was agreed in the SoCG on this substantive matter.

13. In terms of the standards for the affordable housing, this matter arose during the negotiations about the S106 agreement. The Council was correct to point out that the timing of a change to the standards could affect the wording and implementation of the agreement. The matter was resolved as part of those negotiations so that the original housing mix could be maintained, in accordance with the SoCG.

Conclusion

14. Therefore, I conclude that the Council has not behaved unreasonably and has not caused the party applying for costs to incur unnecessary or wasted expense in the appeal process and the application fails.

E A Hill

INSPECTOR