



Costs Decision

Hearing Held on 18 September 2019

Site visits made on 17 and 18 September 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 18th November 2019

Costs application in relation to Appeal Ref: APP/C3620/W/18/3219235 Clover Down, Chartland Lodge and Nor-ven, Leatherhead Road, Bookham, KT23 4RR

- 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 and Stone Retirement Lifestyles Ltd for a full award of costs against Mole Valley District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for the erection of 24 two-bedroom apartments with associated communal areas, landscaping and parking (C3 residential use).
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Decision

1. The application is refused.

The submissions

2. The applicants' case was made in writing prior to the hearing. The Councils' response was also made in writing in advance of the hearing, and the applicants representative Mr R Horton QC also made some further points orally and submitted a written response to the Councils' reply. The submission is for a full award of costs.

Reasons

3. Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses.
4. The applicant contends that the Council has behaved unreasonably by:
 - a) failing to provide any substantive evidence to justify its reason for refusal;
 - b) failing to undertake a proper assessment of the scheme in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires that the application must be determined in accordance with the development plan unless material considerations indicate otherwise;
 - c) failing to weigh the benefits of the schemes against their impact. In particular the delivery of much needed new housing in an area where there is a 2.6 year housing land supply; and
 - d) abandoning reason for refusal no 2 without adequate explanation.

5. The Council contend that the officer report and supplementary statement sets out their position and is clear on: the matters of the principle of development; the five-year housing land supply; and the accepted need for elderly persons accommodation.
6. From the officer's report an assessment of the character of the area was undertaken and it is not unreasonable for the planning officer to rely on the officer report and its supplementary statement as the basis for the appeal. Relevant policies were quoted and the planning officer used professional judgment in considering, albeit briefly, the contribution which the existing buildings and their spacing make to the character and appearance of the area.
7. In its report the Council clearly outlined that: they could not demonstrate a five-year housing supply and that this was a material factor in the determination of the application; that the appeal site was not necessarily precluded from development even though it did not constitute previously developed land; and it made clear that there was an accepted need for elderly persons units. Whilst the Council identified that they did not have a five-year supply of housing and that this was material to the consideration of the scheme they did not explicitly address the balance required to be made as a result of that lack of supply. Nor did they appear to weigh any of the benefits outlined in the Planning Statement which accompanied the application. Indeed, it was not until their statement of case that they addressed the matter of the benefits of the scheme. I must therefore conclude that this aspect of their approach constituted unreasonable behaviour.
8. Nonetheless it was clear that pre-submission discussions were extensive and the Council made clear to the applicant that they could not support the design. In my view, and on the basis of the evidence it was inevitable that the design arguments would need to be pursued at appeal.
9. My attention has been drawn to an appeal decision where an award of costs was made, and which focused on the fact that identifying change without identifying harm is unreasonable behaviour. Nevertheless, in this case, the officer report summarised that the scale, height and massing was considered to be unsympathetic, visually dominant and incongruous when viewed in the street scene causing harm to the character and appearance of the area. On this basis, I am satisfied that the Council did identify harm and the reasons for it, albeit somewhat succinctly. I also note that the costs decision highlighted related to a case where the Councils' decision differed to that of its professional officers and the circumstances do not appear to be the same as in this appeal such that I would be bound to follow the same approach.
10. Turning to the matter of affordable housing; the Council set out in its supplementary statement that it had reviewed the viability of the site and the applicants' current position. The calculations were reassessed and in July the Council withdrew its second reason for refusal setting out in its statement the factors which it had been advised. It stated that the changes identified since the original valuation led to the Council withdrawing its second reason for refusal. Notwithstanding that change of position, the applicants commissioned further evidence and submitted additional viability information in September despite it being clear that the Council were not pursuing this aspect of their original case. It was not unreasonable for the Council to update their position on the basis of updated information provided in the applicants appeal

statement, and whilst the position clearly changed that does not, of itself, evidence unreasonable behaviour.

11. The PPG makes it clear that any application for costs needs to clearly demonstrate the basis for alleged unreasonable behaviour and how this resulted in unnecessary or wasted expense in the appeal process. The costs claim does not make it clear the nature of the unnecessary or wasted expense to which it was put (other than pursuing the appeal at all). The Council had clearly withdrawn the affordable housing aspects of its case and I do not find that unreasonable. It has not therefore been demonstrated, in this regard also, that unnecessary expense in the appeal process has been caused.

Conclusion

12. Even though I have concluded that unreasonable behaviour occurred in relation to the lack of an explicit balancing exercise, this has not resulted in unnecessary or wasted expense as described in the PPG and an award of costs has not been justified.

Janet Wilson

INSPECTOR