



Costs Decision

Hearing Held on 20 November 2019

Site visit made on 19 and 20 November 2019

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2020

Costs application in relation to Appeal Ref: APP/Z4718/W/19/3232430 Land adjacent Upper Quarry Road and Bradley Road, Bradley, Huddersfield

- 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 G R E Bottomley for a partial award of costs against Kirklees Metropolitan Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing dwelling and outline application for the erection of 36 dwellings.
-

Decision

1. The application for a partial award of costs is refused.

The submissions

2. The applicant's case was submitted in writing at the hearing; whilst the Council's response was submitted in writing after the hearing. As the respective cases have been made in writing; I do not intend to summarise them here.

Reasons

3. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and has therefore caused the party applying for costs to incur unnecessary expenses in the appeal process.
4. Paragraph 047 of the PPG states that Local Planning Authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of this, set out in paragraph 047 of the PPG and of relevance to the points raised by the applicant in the application for an award of costs include:
 - Delay in providing information or other failure to adhere to deadlines (open space)
 - Not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witness of both parties.
5. Paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this, set out in paragraph 49 of the PPG and of relevance to the points raised by the applicant in the application for an award of costs include:
 - Not determining cases in a similar manner;

- Acting contrary to, or not following, well-established case law;
 - Failure to produce evidence to substantiate each reason for refusal on appeal;
 - Requiring that the appellant enter in to a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework) on planning conditions and obligations; and
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
6. Paragraph 033 of the PPG states that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether costs should be awarded.

Procedural Matters

7. Paragraph 4.9 of the Council's Statement of Case (SoC) states that it intends to provide the appellant and Inspector with a revised open space figure in advance of the appeal hearing. Information regarding open space contributions arising as a result of the previous Local Plan was available to the applicant. However, the new Local Plan was adopted in February 2019 and this necessitated the application of new standards as set out in Policy LP63.
8. The revised open space calculation was provided the day before the hearing in response to my request for a 'Statement of Compliance' in relation to the contributions. It is a matter of procedure to request such a Statement and does not indicate that the evidence in relation to this matter is deficient. There was a legitimate reason for the recalculation of the figures given the adoption of the Local Plan.
9. The information was provided before the hearing and discussed in detail at the event. The applicant did not request an adjournment to consider the information and I indicated that there would be an opportunity to respond after the close of the hearing if so required. Accordingly, it has not been demonstrated how the applicant has been prejudiced by the submission of the information or how he has incurred additional costs.
10. In relation to the Statement of Common Ground (SoCG), it would appear that delays were as a result of a combination of factors involving both parties. I agreed to the extension of time for the submission of the SoCG which was duly submitted within the extended deadline and well in advance of the hearing. Furthermore, it has not been demonstrated how the applicant has been prejudiced by any delay. In conclusion, I do not consider that the Council has acted unreasonably in relation to these procedural issues or that additional costs have been incurred.

Substantive Grounds

Viability

11. The applicant considers that the Council has not justified why it has departed from previous procedures in relation to the assessment and weight to be attached to viability appraisals in the consideration of planning applications. However, it appears the Council has refused applications on the grounds that development would not make provisions for affordable housing or education and have been

consistent in their decision making on this matter since the adoption of the new Local Plan.

12. Furthermore, paragraph 50 of the Framework states that *"the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force"*. The Council clearly had regard to the Viability Appraisal in their decision as a material consideration and has supported this stance at appeal. Whilst I have accorded the Viability Appraisal significant weight in my Decision this is a matter of planning judgment and the Council were free to reach their own judgement on the issue.
13. The viability clause in the relevant policies is there to provide flexibility to the decision maker to take viability into account; they do not compel the decision maker to automatically accept that the lack of provision of affordable housing or other infrastructure. Consequently, I do not consider that the Council has acted unreasonably in this regard.

Obligations

14. The applicant considers that the Council has not provided evidence of demand, need, supply or infrastructure requirements in relation to the requested planning obligations or how they meet the tests in the Community Infrastructure Regulations (2010) (as updated) (CIL Regulations) and the Framework and as a consequence has not substantiated reason for refusal two.
15. With regards to the requested affordable housing contribution, the evidence of need is set out in the Kirklees Strategic Housing Market Assessment (SHMA) 2016, the Local Plan and the application stage comments of the Council's Strategic Housing team. The SHMA is a public document forming part of the evidence base for the Local Plan and so has been available to the applicant. The 20% affordable housing requirement is established in the Plan and the off-site contribution is calculated at equal value to on-site provision. Consequently, as I have concluded in my Decision, the requested contribution meets the tests set out at Regulation 122 of the CIL Regulations and the Framework.
16. The requested open space contribution has altered since the application was determined due to the adoption of the Local Plan. The Council's requested contribution is based on up-to-date standards in the Local Plan and evidence in the Open Space Study which informed the Plan. The proposal would include family housing which would generate demand for open space. The requirement is based on the amount per dwelling and is, therefore, fairly and reasonably related to the development. The financial contribution is based on the cost of providing equivalent provision 'on the ground'. It is not clear how the 15% administration fee has been arrived at, but I would have requested clarification on this matter had I decided to allow the appeal.
17. Although the draft Open Space SPD has not yet been published, there is sufficient information in the above-mentioned documents to determine the need for and scale of the requested contribution. Overall, as I have concluded in my Decision, the requested contribution meets the tests set out at Regulation 122 of the CIL Regulations and the Framework.
18. It appears that the information in terms of how the contribution was calculated under the previous Local Plan was set out in an email from the Council's landscape

architect. Furthermore, the applicant made no indication that open space could or would be provided on site to the Council. The Council's Community Infrastructure Levy has not yet been adopted and in any event is subject to a separate process. I have concluded that the requested contribution would be justified under normal circumstances. Furthermore, whilst I have concluded that significant weight should be given to the Viability Appraisal and that the contribution would not be required in light of the viability clause in the Policy, this is a matter of planning judgement and the Council was entitled to reach its own view.

19. Policy LP63 is clear that open space should be provided as part of new housing developments and so the requested contribution should not be a surprise to the applicant. The standards are clearly set out in the Plan. Furthermore, it has not been demonstrated how unnecessary expense has been incurred by the applicant. Consequently, I do not consider that the Council has acted unreasonably in this regard.
20. The Council's calculation for education is based on a detailed assessment of the number of school places required as a result of the development and an analysis of the numbers on roll and net capacity at the Primary Admission Area Primary School at the time the development would be occupied. This evidence was available during the application stage of the appeal proposal. The Council has not acted unreasonably in this regard.
21. The Council has explained the planning consequences of the non-viability of the proposal¹ and granting planning permission in terms of not meeting known housing needs or the open space or educational needs of the proposal's residents.
22. These reasons have been clearly articulated in the Council's committee report and appeal statement. The weight to be attached to these issues is a matter of planning judgement.
23. At the time of writing the committee report, the Council did not have a five-year supply of housing land and this was recognised with reference to the 'tilted balance' at Paragraph 11 of the Framework. The Council was clearly aware of the balancing exercise which needed to be undertaken. The balancing exercise is set out at paragraph 7.1 of the Council's statement.
24. Suggested condition 16 relating to metro cards and bus stop improvements was included in the Council's Statement of Case. I have not considered this suggested condition in detail as I have decided not to allow the appeal. Nevertheless, it is normal practice for the Council to suggest conditions in their Statement of Case as a basis for discussion and I do not consider that the Council has acted unreasonably in this regard.
25. The Council produced the twelve-page document relating to obligations in response to my request for a 'Statement of Compliance' regarding planning obligations. This is standard procedure in advance of an event. Much of the evidence in the Council's response reiterates previous information in relation to affordable housing and education provision. Some new information relating to open space was provided in response to the new standards in the recently adopted Local Plan. These standards have been in draft form for some time and should not come as a surprise to the appellant. Furthermore, both the Strategic Housing Market Assessment and Open Space Study have been in the public domain as part of the Local Plan process for some time.

¹ Sosmo Trust v Secretary of State for the Environment [1983] J.P.L 806

26. I note that the applicant's response to the Council's submissions also includes reference to an additional document. There is no evidence before me of the appellant seeking legal advice as a result of the Council's response to my request or indeed incurring significant additional work as a result.
27. In conclusion on the matter of planning obligations, I consider that the Council has justified in principle the request for the respective affordable housing, open space and education contributions. I have afforded significant weight to the Viability Appraisal and decided that in the particular circumstances of the case, the contribution would not be required for viability reasons. However, the Council was entitled as a matter of planning judgment to reach its own view. Consequently, I consider that the Council has substantiated reason for refusal two.

Highway Matters

28. The Council considers that the proposed access would cause harm to highway safety and indeed I have reached the same conclusion. The Committee report and reason for refusal one clearly articulated the Council's concerns and referred to the relevant policies. The Council supported its stance at the subsequent appeal. Officers were entitled to draw on their professional expertise and experience at other junctions in the District. I consider that the Council has raised legitimate concerns in an appropriate manner and that this reason for refusal is substantiated. Accordingly, it did not act unreasonably in relation to highway matters.

Other behaviour during the application process

29. The applicant alleges that the Council introduced a new reason for refusal relating to viability late in the application process. Viability and financial contributions are legitimate planning concerns and the appellant had opportunities to make representations to officers and members prior to the application being determined. It is, therefore, unclear as to how the applicant has been prejudiced as a result.
30. The Highway Development Management officer's comments referred to the proposed relief road scheme and the matter was discussed at a meeting held between the Council and the appellant on 26 February 2018. Clearly the proposals were at an early stage and so the Council was not obliged to share them with the applicant prior to this. Consultation on the scheme commenced on the three options on 3 December 2018. The Council clearly stated that the proposed relief road is not a material consideration in the determination of the application and indeed I have taken the same view. There is no cogent evidence before me that any alleged delays in handling the planning application were due to the link road scheme. The Council has not behaved unreasonably in this regard.
31. The previous proposal for nine dwellings at the appeal site involved fewer houses and was determined in a different planning policy context to the appeal proposal. In particular, the Council were unable to demonstrate a five-year supply of housing land at the time. Moreover, information has since come to light which shows that Highways Development Management did raise concerns regarding the previous application. The applicant chose to purchase number 32 Bradley Road prior to the determination of the planning application for the larger scheme and did so at his own risk.
32. The party's recollections of the discussions which took place at the Local Plan Examination differ. However, information contained in evidence for the Local Plan Examination – the 'Rejected Site Options Report' – states that a suitable site

access cannot currently be achieved and refers to issues of road safety in the area. The Inspector's report also clearly refers to access issues. There is no cogent evidence before me that the Council behaved unreasonably in this regard.

33. Overall, there is no evidence before me that the Council behaved unreasonably during the planning application process.

Conclusion

34. For the reasons stated, I conclude that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

Inspector