



Costs Decision

Hearing Held on 10 December 2019

Site visit made on 30 December 2019

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 January 2020

Costs application in relation to Appeal Ref: APP/U2235/W/19/3232230 Land at George Street, Staplehurst, Kent TN12 0RA

- 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 Maidstone Borough Council for a full or alternatively partial award of costs against Trafalgar New Homes.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for 80 extra care units with associated communal facilities; provision of vehicular and cycle parking together with all necessary internal roads and footpaths; provision of open space and associated landscape works; and ancillary works and structures (outline application with all matters reserved).
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Decision

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

The submissions

2. The application for costs by the Council was made in writing at the end of the hearing. As there was no advanced notice of the application and it raised a number of matters that required research it was agreed that the response by Trafalgar New Homes would be made in writing with the Council then given an opportunity to make any final comments. The response to the application was subsequently received on 18 December 2019 and the final comments of the Council on 3 January 2020.

Reasons

3. Planning Practice Guidance 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. The Council claims a full award of costs against the appellant on substantive grounds or alternatively, if that claim fails, a partial award of costs on procedural grounds.
5. The claim on substantive grounds is that the appellant unreasonably pursued an appeal that had no reasonable prospect of succeeding. The proposal was contrary to an up to date local plan, there was a strong housing land supply position, a previous appeal on the site had been dismissed, with two-bedroom units many residents would not need care, a minibus would not make the site sustainable and the appellants had no track record in C2 schemes.

6. To increase its credibility, this claim should have been made when the Council first responded to the appeal as the appellant's arguments were clear from the outset. The appellant would then have been forewarned that they risked costs and could have taken that factor into account in deciding to pursue their case. There is no requirement to have an existing track record in a particular type of development to make a planning application or appeal.
7. The need for more Class C2 development in the borough was accepted by the Council and is a valid material consideration to balance against the local plan. As a C2 scheme the physical form of the proposal would be different from a standard C3 housing estate. It is reasonable for C2 schemes to accommodate couples, only one of whom might need care, and legitimate to propose two-bedroom units to provide more living space and the option to have visitors to stay. A minibus would clearly help to address sustainability concerns. The current proposal is therefore materially different from the previous residential scheme dismissed on appeal and notwithstanding the availability of housing land it was consequently not unreasonable to pursue the case.
8. The claim on procedural grounds is that the appellant behaved unreasonably by not completing a timely statement of common ground (SOCG) and as a result raised concerns at a late stage in relation to housing land supply which required a detailed response by the Council.
9. The appeal start letter requested the SOCG by 12 September 2019 but at this stage no Inspector had been appointed and the hearing date was not finally agreed until 4 November. Approaching the hearing date of 10 December and with the SOCG still not submitted, the Inspector requested the document by 6 December and asked that this include the housing land supply (HLS) position. In the event it was not possible to agree on HLS so the Council and appellant submitted separate HLS statements alongside the SOCG on 6 December. The appellant's submission was relatively detailed and resulted in a rebuttal from the Council dated 9 December, the day before the hearing.
10. It is regrettable that the appellant produced a draft SOCG late on 18 November but the Council had ample time until 6 December to respond and was not disadvantaged. The unfortunate consequence was that the Inspector was not alerted to raise the HLS position until 2 December and it then had to be dealt with rapidly. Given the Inspector's request it was reasonable for the appellant to dispute the Council's position and several relevant points were raised. Whilst needed at short notice, the Council's rebuttal responded to some of these points and consequently its preparation was not a wasted expense.

Conclusion

11. For the above reasons unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated, and the claim for costs is therefore refused.

David Reed

INSPECTOR