



Costs Decision

Site visit made on 9 March 2020

by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI

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

Decision date: 20 March 2020

Costs application in relation to Appeal Ref: APP/T1410/W/19/3243937 Glebe Cottage, 4 Grassington Road, Eastbourne BN20 7BU

- 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 Urban Developments SE Ltd for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling. Proposed 16No block of flats with associated parking to rear.
-

Decision

1. The application for costs is refused.

Reasons

2. The 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.
3. The appellant's claim for costs centres on the Council's failure to undertake a balancing exercise as required by Paragraph 11(d) of the National Planning Policy Framework. As a consequence of this shortcoming, Members did not give appropriate weight to the benefits of delivering additional homes or the commuted sum towards affordable housing which had been offered. The appellant also considered the reason for refusal relating to drainage was insufficiently justified.

Affordable housing

4. It will be seen from my decision that I have undertaken the appropriate balancing exercise having regard to the evidence presented by both parties during the appeal process. In so doing, I was not satisfied that the Financial Viability Assessment (FVA) undertaken by the appellant complied with the requirements set out in the *Eastbourne Affordable Housing: Supplementary Planning Document (SPD)*. There was therefore insufficient evidence to demonstrate a contribution of £65,939 was all that the scheme could provide towards affordable housing. However, notwithstanding the shortcomings of the FVA, there were additional justifiable reasons as to why the Council considered the lack of an adequate contribution towards affordable housing was unacceptable. It therefore did not act unreasonably in relation to this matter.
5. The appeal provided the appellant with an opportunity to present additional information in support of the contention that the contribution proposed was the maximum that the scheme could support. However, no such details were

provided and no Unilateral Undertaking (UU) to secure the contribution was submitted. Consequently, in the absence of evidence to justify a reduced contribution to affordable housing provision and a completed UU, I found that the scheme failed to comply with the development plan. If I had been persuaded otherwise, I would have given the matter greater weight in undertaking the balancing exercise as part of the appeal. It would also have been evident that the appellant had incurred additional expense to present supporting information and justify the assumptions underlying the FVA. However, that was not the case.

Drainage

6. The appeal site is in an area that has been identified as having a low risk of flooding. However, there is a requirement for all development to dispose of surface water in a sustainable manner. Having submitted a drainage report with the application, the appellant had therefore anticipated that this matter could be dealt with through the imposition of conditions. However, given its concerns in respect of other matters, the Council was not unreasonable in requiring a greater degree of certainty when it made its decision.
7. The additional information that was provided with the appeal enabled me to conclude that the use of conditions would be an appropriate approach in this case. However, the appellant has not incurred unnecessary expense as if the scheme had been acceptable, I would have sought agreement on the precise form of those conditions before issuing my decision.

The 'tilted balance'

8. In addition to the reasons for refusing the scheme associated with drainage and lack of affordable housing, the officer report also found harm to the character and appearance of the area and the living conditions of adjoining occupiers. The Council therefore had several substantive reasons for refusing the proposal having assessed it against the development plan.
9. However, the Council failed to undertake the 'tilted balance' as required by the Framework. I consider this to be a regrettable oversight, particularly as the officer's report acknowledged that the Council is unable to demonstrate a five-year supply of deliverable housing sites. Nevertheless, as the Local Plan is broadly consistent with the Framework's approach to design, residential amenity, sustainable drainage and providing for affordable housing, the Council's decision was not unreasonable.

Conclusion

10. I therefore conclude that while the Council could have relied on conditions to address the drainage and should have undertaken the balance required by Paragraph 11(d) of the Framework, it did not behave unreasonably in refusing the scheme. I have found that the decision did not prevent or delay development which should have been permitted, neither did it result in any unnecessary expense for the appellant in the appeal process. It therefore follows that no award of costs is justified.

Sheila Holden

INSPECTOR