



Costs Decision

Inquiry held on 10 - 12 March 2020

Site visit made on 11 March 2020

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Costs application in relation to Appeal Ref: APP/J2210/W/19/3226136 35 - 41 New Dover Road, Canterbury CT1 3AT

- 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 YourLife Management Services Ltd for a partial award of costs against Canterbury City Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of the site comprising 50 Extra Care apartments for older persons with associated communal facilities, parking and landscaping (C2 use class).
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's failure to produce evidence to substantiate each reason for refusal on appeal; refusing planning permission on a planning ground capable of being dealt with by conditions; and not determining similar cases in a consistent manner.
3. The main parties submitted their cases in writing and therefore there is no need to repeat them in full. Where additional comments were made orally, I have addressed these in my decision.
4. The applicant is seeking a partial award of costs in respect of the costs of addressing the Council's fourth reason for refusal with regard to provision of affordable housing and of producing evidence to demonstrate that the proposed development would fall within C2 use class. This is on the basis that if the proposed development was within C3 use class, affordable housing would need to be provided for, but that if it fell within C2 use class it would not.
5. After the receipt of the applicant's proofs, the Council confirmed in writing on 19 February 2020 that it accepts in the circumstances of this case the development proposed would fall under C2 use class.
6. While initially the applicant suggested that the appeal could proceed by means of a hearing or written representations if this matter were not to be discussed, this issue was conceded in their reply to the Council's response to the costs

- application. Any unnecessary expense should be confined to the preparation of relevant parts of Mr Child's proof and appendices and Ms Martin's evidence.
7. It is apparent that the Council raised the issue of the use class of the proposed development during pre-application discussions in 2018 and during the lifetime of the planning application in 2019. In responding to these concerns, the applicant provided a substantial volume of documentation prior to and during the appeal process. The documentation which accompanied the applicant's statement of case includes other appeal decisions such as those at Lancaster¹ and Tettenhall², legal advice, housing research, a draft operational management plan, and their planning statement.
 8. Notwithstanding the significant efforts made by the applicant in engaging with the Council throughout the pre-application, application and appeal process, it was only at the point that the proofs of evidence were exchanged in February 2020 that the Council received the statement of Ms Pennicott for the first time as part of Ms Martin's proof of evidence. Ms Pennicott's statement provides very detailed evidence on how such extra care schemes function and how care is provided to residents. Despite all the other documents previously provided by the applicant, it appears that Ms Pennicott's statement is the convincing evidence which altered the Council's view on the nature of the proposed development in this instance. It was not unreasonable for the Council to need more detailed information from an extra care practitioner to determine that the proposed development fell within a particular use class.
 9. While the Council could have requested the supporting information for the Tettenhall appeal from the applicant, including Ms Pennicott's statement, it was not possible for the Council to know prior to having seen it that it was of key importance in altering their view on the proposed development's use class. If the applicant wanted such evidence to be considered by the Council so that the Council could deal with similar cases in a consistent manner, Ms Pennicott's statement should have been submitted at an earlier point in proceedings.
 10. In the absence of the information contained in Ms Pennicott's statement, it was not possible for the Council to be certain prior to February 2020 that the matter of use class could be acceptably addressed by means of condition or planning obligation.
 11. I find that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Conclusion

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

Joanna Gilbert

INSPECTOR

¹ APP/A2335/A/13/2195739, decision issued 24 September 2013.

² APP/D4635/W/16/3150728, decision issued 17 January 2017.