The Planning Inspectorate

Costs Decision

Inquiry opened on 6 October 2020

Site visits made on 21 October 2020

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Costs application in relation to Appeal Ref: APP/N4720/W/20/3250249
Wordsworth Drive & Sugar Hill Close, Oulton, LS26 8EP

- 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 Pemberstone (Oulton Properties) Ltd for a full award of costs against Leeds City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of the existing dwellings and the erection of 70 dwellings including associated infrastructure.
- The inquiry sat for eight days: 6-9 & 13-16 October 2020.

Decision

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

The submissions for Pemberstone (Oulton Properties) Ltd

2. The application was made in writing (Document O1): the gist of the submissions is as follows. The proposal accords with the Development Plan, and was recommended for approval by the Local Planning Authority's (LPA's) planning officers. It was accepted by the LPA's planning witness that the proposal complied with policies in the Development Plan other than the social aspect of the General Policy. This policy is unsuited to being used as a reason to refuse planning permission. Exceptionally limited weight is given to important benefits, due to consideration of a refurbishment option rather than the site as existing. Moreover the LPA put in no evidence on the viability of refurbishment, and it was unreasonable to assert that the Appellant's case on refurbishment was unproven.

3. The LPA failed to produce evidence to substantiate the reason for refusal remaining in issue. The witness on equalities impact focussed almost entirely on general community impacts. No reference was made to the application of the public sector equality duty by the LPA's officers, or why a different conclusion was justified. Nor was consideration given to the particular circumstances of the case concerning tenure and structural condition of the properties. The LPA had no evidence to show that existing tenants would require or be eligible for housing assistance from the Council.

4. The LPA's case rested on vague, generalised or inaccurate assertions that the grant of planning permission would lead to the dissipation of the community, with a disproportionate effect on those with protected characteristics, and that refurbishment was a viable option which would avoid that harm. The first

assertion ignored the legal rights of the tenants and the need for a solution to the condition of the houses. No evidence was presented in support of the refurbishment option.

5. In the absence of clear conflict with planning policy and/ or other harm, the relative advantages of alternative schemes were normally irrelevant. The LPA had relied upon a vague and unviable alternative proposal as a yardstick against which to measure harms and benefits, which was contrary to well-established case-law.

6. The Appellant was obliged to engage expert witnesses to respond to the unfounded assertions of harm. The position that refurbishment was a viable alternative strengthened Save Our Homes' (SOH) conviction on this matter, resulting in more evidence being submitted and more inquiry time taken. A significant proportion of the appeal could have been avoided if the LPA had recognised that the decision on the appeal proposal could have no effect on the Appellant's ability to seek possession of the majority of the existing houses. That would have avoided the need for evidence on the public sector equality duty, as the Inspector could have relied upon the consideration of this matter in the officers' reports. Following the exchange of evidence, the Appellant gave the LPA the opportunity to reduce the costs associated with the appeal and to avoid this application by withdrawing its objection. That offer was not accepted, which was an unreasonable position to take.

The response by Leeds City Council

7. The response to the costs application was made in writing (Document O3): the gist of the response is as follows. The application of planning policy is a matter of professional judgement. It was the professional view of the LPA's planning witness that the proposal offended the General Policy of the Development Plan. He explained that the social implications were such that the conflict with the social limb of the policy was determinative regarding Development Plan compliance. The General Policy applies to all applications. The LPA's witness was entitled to weigh the benefit as he saw fit. Whilst he gave due consideration to the option of refurbishment, his overwhelming concern was about the social harm arising from the proposal.

8. The second submission is a complaint about disagreement with the LPA's equality and community impacts evidence. The reason for refusal refers to harm to the existing community, particularly those with protected characteristics. The evidence explained how the effects of the proposal would impact on those with protected characteristics. There was time to seek clarification of matters contained in the evidence, and a rebuttal could have been submitted in respect of the survey references. In any event no prejudice arose as the Appellant's evidence was that the proposal would not cause inequality, but would seek to address underlying issues. The public sector equality duty was a continuing requirement, and the position of officers was not to be accepted uncritically. It is possible that different decision-makers may arrive at different conclusions. The evidence of the LPA's equalities witness reflected the circumstances of the case, and addressed how people with protected characteristics would be affected by the development. Whilst benefits are acknowledged, the existing community will not be able to stay on the appeal site, with the exception of protected tenants and those who may secure affordable housing. Distinguishing between seeking planning

permission and evicting the tenants was a false dichotomy, since there was a strategy of obtaining planning permission, then evicting tenants, demolishing houses, and building the new development.

9. The Appellant's rights under housing law have been acknowledged, but the material issue is the weight to be given to the fallback position, which is a matter of planning judgement. Use could be made of the 14 vacant properties, and existing residents would not need to be displaced to facilitate development. Moreover, the sensitivity test indicated that refurbishment could provide a reasonable return.

10. As there was conflict with policy and planning harm would occur, the opportunity to avoid that harm by means of an alternative proposal should be considered. Matters relating to tenants were a material consideration, in view of Article 8 of the European Convention on Human Rights and the legal requirement that no other consideration should be regarded as more important than the best interests of any child.

11. In its statement, the Appellant had volunteered to provide evidence relating to structural integrity and the commercial acceptability of refurbishment. It was reasonable for the LPA to require the Appellant to establish its case. It is not the case that the only reasonable course of action for the LPA would have been to cease to defend its position at appeal.

Reasons

12. Paragraph 16-028 of Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

The Development Plan and material considerations

13. In my appeal decision, I agree with the LPA that the proposal would fail to comply with the social limb of the General Policy in the Core Strategy, due to the disruption caused to existing residents, and the dissipation of the existing community. As paragraph 3.4 of the Core Strategy makes clear, this policy is relevant to all development proposals, and, that being the case, it is not a policy which, in principle, is inappropriate to refer to in a reason for refusal. The LPA acknowledges that the proposal would comply with other relevant policies of the Development Plan. I do not share the view of the LPA that, as a consequence of the failure to comply with the General Policy, there is conflict with the Development Plan as a whole. However, reaching a conclusion on this matter does not depend on a numerical assessment of the policies with which a proposal does and does not comply. It is a matter of planning judgement, and the LPA's planning witness explained why he gave significant weight to the conflict with the General Policy. Whilst reference was made to a refurbishment option, material considerations have been taken into account in respect of the appeal proposal, and reasons given as to whether or not these support the proposal.

The contested reason for refusal

14. The contested reason for refusal refers to the public sector equality duty and to the harm that would result to the existing local community, particularly to those with protected characteristics. It is clear from this form of words that the objection to the proposal had a wider focus than simply the public sector

equality duty. Evidence was produced by the LPA's witness which considered a range of effects of the proposal on the existing community, specifically identifying groups with protected characteristics in relation to temporary and permanent adverse effects. I am satisfied that the evidence produced was sufficient to substantiate the reason for refusal.

Effect on the community and refurbishment

15. Proceeding with the appeal proposal would involve demolition of the existing houses, and, in reaching the view that the community would be dissipated, the evidence of the LPA's planning and equalities witnesses took into account the likelihood of existing residents being able to move into the new dwellings, having regard to their tenancies. It is open to the Appellant to give notice to the existing occupiers, subject to providing alternative accommodation for those who benefit from protected tenancies, but that course of action had not been pursued at the date of the inquiry, and it does not alter the position that dissipation of the community would follow from pursual of the appeal scheme.

16. In the evidence of the LPA's planning witness reference is made in general terms to refurbishment of the estate. The position taken is that the Appellant has not proven that refurbishment is not a viable alternative. Subsequently, in her closing submissions, the LPA's advocate drew on evidence from SOH to make the point that there was an alternative scheme before the inquiry. Whilst the LPA could properly expect the Appellant to make its case in respect of refurbishment and viability, it did not produce detailed evidence of its own to support a case for refurbishment, and made little contribution to the structural and viability round-table sessions of the inquiry. I consider that the LPA's references to refurbishment amounted to generalised assertions, which were unsupported by objective analysis. That was unreasonable behaviour, as indicated in paragraph 16-049 of PPG.

17. In its statement of case, SOH gave notice of its intention to submit evidence in support of its view that the existing houses were capable of satisfactory repair. It did so, with two witnesses addressing this matter. There was no such position in the LPA's statement, and it is clear from its representations that SOH had a long-held view firmly in favour of refurbishment which was unaffected by any stance taken by the LPA. The Appellant advised at the case management conference that witnesses would be called covering the structural condition of the houses and viability and it engaged on these topics with SOH at the inquiry. No additional evidence was required by the Appellant to respond to the LPA on this matter, and the limited references involving the LPA did not materially extend inquiry time. Consequently no unnecessary expenditure was incurred by the Appellant.

An alternative proposal

18. In most cases, the relative merits of an alternative scheme would not carry significant weight. In this case, the need to address the condition of the existing housing and the LPA's assessment of harm support the consideration of alternatives, an exercise which the Appellant's planning witness undertook in section 3 of his proof of evidence. It was not unreasonable, in principle, for the LPA to refer to the alternative of refurbishment, and I have already considered the way in which this was done (above, para 16).

Conclusions

19. I conclude that the LPA has not behaved unreasonably in respect of its consideration of the Development Plan and material considerations, the contested reason for refusal and the principle of referring to an alternative proposal. I also conclude that it was unreasonable for the LPA to make generalised assertions in respect of the refurbishment of the existing houses, but that this unreasonable behaviour did not cause the Appellant to incur unnecessary or wasted expense in the appeal process. Consequently an award of cost is not justified.

Richard Clegg

INSPECTOR