The Planning Inspectorate

Costs Decision

Site visit made on 15 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2021

Costs application in relation to Appeal Ref: APP/M1710/W/20/3258862
Alton Magistrates Court, 25 Normandy Street, Alton GU34 1DQ

- 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 East Hampshire District Council for a full award of costs against Mr S Paull (McCarthy and Stone Retirement Lifestyles Ltd).
- The appeal was against the refusal of the Council to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.

Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against appellants may be either procedural, in regard to behaviour in relation to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.

4. The applicant claims that the appellant has acted unreasonably on procedural grounds because the appeal does not relate to the development which was applied for in the section 73 application, namely an increase in the number of electrical charging points, and that the appellant has deliberately sought to hide the main purpose of the section 73 application which was to avoid paying the contribution towards off-site affordable housing which had been secured by means of a Section 106 Planning Obligation attached to the original planning permission.

5. The substantive grounds for seeking costs are that the appellant did not submit a Deed of Variation (DOV) to the aforementioned Section 106 Agreement, and then subsequently, following the submission of a new application for the development, conceded that the development was capable of providing an affordable housing contribution.

6. The Council had advised the appellant that it considered that a DOV to the Planning Obligation should be sought, or a new planning application be submitted for the development, through which the matter of the affordable housing contribution could be assessed.

7. I note that the appellant submitted a Financial Viability Assessment (FVA) to the Council shortly after the registration of the section 73 application, which concluded that a financial contribution towards affordable housing would render the development unviable. On this basis the appellant considered that a DOV to the original Planning Obligation was not necessary. I also note that the appellant invited the Council to review the FVA and, offered to pay reasonable costs associated with such a review.

8. The appellant’s cost response states that it would have agreed to a DOV, if a review of the submitted FVA concluded that a contribution was required, but that this was not tested, since the Council did not consider the submitted FVA as part of the determination of the section 73 application.

9. Furthermore, in support for requesting the FVA to be considered under the section 78 application, the appellant noted previous experience of having to submit updated viability information in relation to section 73 applications, with a resulting impact on the required affordable housing contribution.

10. The appellant’s cost response cites the submission of a new duplicate planning application to the original application, which included financial viability information for review, whilst the section 73 application was under determination, as further evidence that the appellant was not trying to use the section 73 application to avoid paying the affordable housing contribution.

11. Having regard to the above, and on the basis of the evidence before me, I am not persuaded that the appellant acted unreasonably by not submitting a DOV as part of the section 73 application, nor that the main purpose of the appellant’s section 73 application was to avoid paying an affordable housing contribution in respect of the development, and that the appellant deliberately intended to conceal this purpose.

12. I also do not consider that the appellant acted unreasonably by conceding during the course of the consideration of the duplicate planning application that an affordable housing contribution would be viable, since this agreement was reached following discussions between the main parties, including a review of the FVA by the Council. It is not uncommon for reviews of viability appraisals to result in changes to developer contributions during the course of negotiations during the planning application process. Furthermore, the Unilateral Undertaking that was submitted with the appeal appears to be based on the negotiations between the main parties that have taken place in respect of the duplicate planning application.

13. So, whilst I have dismissed the appeal, for the reasons explained in the accompanying decision, I do not find that the appellant has acted unreasonably, having regard to the above. In forming this view, I have also taken account the unprecedented economic impact associated with Covid-19 and the potential impact upon development viability.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S Leonard

INSPECTOR