The Planning Inspectorate

Costs Decision

Hearing Held 26 January 2021

Unaccompanied site visit made on 2 February 2021

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 04 March 2021

Costs application in relation to Appeal Ref: APP/P1940/W/20/3246212
Banstead Down Old Chorleywood Road, Rickmansworth, WD3 4EH

- 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 Three Rivers District Council for a partial award of costs against Mr Vince Millen of Millen Homes Ltd.
- The hearing was in connection with an appeal against the refusal of outline planning permission for 3 detached self-build plots with parking and new access on land at Banstead Downs and Dell House, Old Chorleywood Road, Rickmansworth.

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Three Rivers District Council

2. The application by the Council for a partial award of costs was made in writing in advance of the hearing. It was not added to at the hearing. In summary it is submitted that the appellant has behaved unreasonably and caused the Council to incur unnecessary and wasted expense by commissioning consultants to prepare appeal documentation and attend the hearing to deal with matters relating to the financial viability of the proposals. This was in response to the appellant's viability evidence which sought to demonstrate the scheme could not viably fund the disputed affordable housing contributions.

3. The main substance of the Council's claim is that the appellant submitted a detailed financial viability appraisal alongside their appeal statement. It is alleged that this should have been submitted with the planning application, where the Council's local validation requirements make clear that any qualifying scheme not able to meet the requirements of Policy CP4 of the Three Rivers District Council Core Strategy (2011) (CS) for financial viability reasons should be accompanied by a viability appraisal. The local validation requirements also say that where a viability appraisal is submitted, funds for the Council to commission its own expert viability assessment should also be provided in order for the Council to reach an informed conclusion as to whether or not Policy CP4 of the CS should be applied or not for viability reasons.

The response on behalf of the appellant

4. The appellant's response to the claim was made in advance of the hearing and was briefly added to at the hearing. It is alleged the need for the viability

appraisal was not a validation requirement, particularly as the Council validated the planning application without it. It was explained that whilst the appellants chose to prepare a viability assessment for their own purposes whilst the planning application was under consideration the appellants only chose to submit it as part of the appeal evidence after the planning application had been refused.

5. Furthermore, it is argued appellants are not restricted from submitting new evidence when an appeal is lodged. Moreover, it is alleged the Council's viability appraisal is flawed and should not therefore be funded by the appellants. Overall, it is submitted that unreasonable behaviour has not been demonstrated.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may 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.

7. The PPG gives examples of unreasonable behaviour which may give rise to an award of costs against an appellant which include only supplying relevant information at appeal when it was requested, but not provided, at application stage and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

8. The Council's validation checklist makes clear that where policy requirements cannot be met due to viability, a viability assessment must be submitted at validation stage. Furthermore, it says the Council will send any viability information submitted to an independent financial advisor, the cost of which shall be borne by the applicant and payable at validation stage.

9. I have considered the correspondence between the Council and the appellant prior to the validation of the planning application. It clearly shows that the appellant did not consider Policy CP4 of the CS should be applied for reasons which did not relate to the viability of the scheme and detailed evidence to support this position was submitted to the Council to justify this stance. The Council subsequently validated and determined the planning application without a detailed viability assessment.

10. However, the appellant appended a detailed viability assessment to their appeal statement. Whilst I accept the requirements of Policy CP4 of the CS were disputed in principle, this was the first time the Council had sight of this evidence. This information was requested by the Council at application stage and the appellant did not provide it. Against this background, in my view, the introduction of substantial technical evidence alongside the appeal statement, a relatively late stage, amounts to unreasonable behaviour.

11. Furthermore, the technical nature of the evidence is such that it reasonably necessitated the Council to incur otherwise unnecessary expenses commissioning its own technical evidence in response. Irrespective of the appellant's comments about the quality of that work, the appellant's actions led to the Council's costs in this regard. Moreover, had the viability work been submitted alongside the planning application those costs would have been

incurred by the appellant as clearly set out in the Council's validation requirements.

12. For these reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Vince Millen of Millen Homes Ltd shall pay to Three Rivers District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to commissioning expert financial viability evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Vince Millen of Millen Homes Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Fleming

INSPECTOR