The Planning Inspectorate

Costs Decisions

Site visit made on 18 July 2023

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Costs applications in relation to Appeal Ref: APP/Q3305/W/22/3312171
Church Farm, Frome Road, Rode, BA11 6PW

Application A

- 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 Mendip District Council for a partial award of costs against Autograph Homes.
- The appeal was against the refusal of planning permission for the Demolition of existing buildings at Church Farm, Rode (except buildings in the conservation area), and redevelopment of the site for 44 dwellings and associated public open space and improved access. Development of land off Parkgate Lane for a replacement farmyard incorporating 8700m2 of new and replacement employment floor space for the use of agriculture, haulage, building supplies, agricultural storage, food production and ancillary uses together with widening of Parkgate Lane and provision of a new access; and change of use of part of an agricultural field to form an extension to the existing playing field. Provision of two new footpath/cycleways from Church Farm to Church Lane and playing field extension to Church Lane (Access only to be considered, all other matters reserved for subsequent consideration) (amended plans received 05/12/12) without complying with conditions attached to planning permission Ref 2011/3124, dated 10 February 2014.

Application B

- 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 Autograph Homes for a partial award of costs against Mendip District Council.
- The appeal was against the refusal of planning permission for the Demolition of existing buildings at Church Farm, Rode (except buildings in the conservation area), and redevelopment of the site for 44 dwellings and associated public open space and improved access. Development of land off Parkgate Lane for a replacement farmyard incorporating 8700m2 of new and replacement employment floor space for the use of agriculture, haulage, building supplies, agricultural storage, food production and ancillary uses together with widening of Parkgate Lane and provision of a new access; and change of use of part of an agricultural field to form an extension to the existing playing field. Provision of two new footpath/cycleways from Church Farm to Church Lane and playing field extension to Church Lane (Access only to be considered, all other matters reserved for subsequent consideration) (amended plans received 05/12/12) without complying with conditions attached to planning permission Ref 2011/3124, dated 10 February 2014.

Decisions

1. Application A for an award of costs is refused.

2. Application B for an award of costs is refused.

Reasons

3. The Planning Practice Guidance 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.

Application A

4. The Council contends that the appellant has acted unreasonably in submitting new evidence at a late stage, by including information at Final Comments stage. However, any such information was submitted in response to the case as set out in the Council's Statement of Case, and this was the first opportunity that the appellant had had to do so. There were no detailed financial appraisal comments contained within the Council's Case Officer Report, the detailed Financial Viability Assessment Review being appended to the Statement of Case. Accordingly, I find nothing unreasonable in the appellant seeking to address this information at Final Comments stage.

5. The Council make further comment in respect of information that was provided in respect of a previous application, via a "Dropbox" link that was sent directly to the Council's viability consultant, as well as comments made in criticism of the Council for not requesting additional information when determining the application. In respect of the previously submitted information, the appellant clearly stated that they did not wish this information to be considered, as it was now out of date. While there are comments made about the information that the Council relied on to determine the application, it appears clear that the previous submitted information was not requested to be considered. Moreover, in relation to criticisms made by the appellant, it is clear to me that the substantive subject of the appeal i.e., the viability of the development, is a contentious matter between the parties. While I note the criticisms made, this does not in my view rise to the level of unreasonable behaviour.

6. The draft Deed of Variation (DOV) submitted by the appellant includes a clause to reduce the Education contribution by 50%. The Council contend this is the first time this has been raised. However, I note that the Case Officer's Report on the application includes reference to the appellant seeking flexibility in the payment of outstanding contributions. As such, this is a matter that has, even if briefly, been raised before and that the Council should not have been unaware of. I note that the DOV includes a specific request in the reduction of this contribution, however the Council has been given the opportunity to comment on the submitted DOV and have agreed to it. Thus, I do not consider this to be unreasonable behaviour resulting in wasted expense for the Council.

7. Lastly the Council suggested that the appellants case has been based on unclear information, citing criticisms made and comments that the Council should have requested additional information. Based on what I have seen, and further to the comments above, I find nothing substantively unreasonable in these regards.

8. In respect of Application A, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application B

9. The applicant has stated that the Council has produced new evidence within its Statement of Case, namely a review of viability undertaken by the Council's consultant. This document was dated after the submission of the appeal and is attached to support the Council's case, as set out in its statement. It is noted that this assessment was not undertaken during the planning application, nonetheless it was provided within the appeal timetable and as part of the Council's statement. The applicant has therefore had the opportunity to review this and make final comments. Given that it was part of, and intended to amplify, the case of the Council I find nothing unreasonable in this information being provided at this stage. Whilst it may have been helpful to the applicant, there is also no compelling reason for the Council to have provided this information to them prior to its inclusion with the Statement of Case.

10. There is also the contention that the Council has introduced an additional putative reason for refusal, within the consultant's review of the viability of the development. There is reference to possible reasons for the lower-than-expected development return, which includes reference to the management of risk associated with the development. I note that this was mentioned within the Case Officer's Report i.e., there is reference to managing risk, and thus in my view it does not add an additional reason for refusal. The reason given is clear that in the Council's view it is not necessary or reasonable to reduce the affordable housing provision. As would be expected with a reason for refusal on a decision notice, it does not rehearse all the arguments that have led to this conclusion. The information provided by the Council amplifies and clarifies its position and basis for refusing permission. I do not find this to be an unreasonable approach for the Council to take.

11. The application further argues that reference by the Council to legislation referring specifically to applications to modify or discharge a planning obligation is irrelevant as the application was not made under these provisions and there has been time and expense incurred in responding to this matter. The Council accept that the application was submitted to modify the conditions attached to a previous planning permission and not under the specific provisions referred to above, and these were mentioned to inform its arguments and to aid transparency and clarity. Given the scope of the development applied for, I find that quoting these provisions is of little use when considering the proposal. However, this does not comprise unreasonable behaviour. The applicant also states the Council failed to have regard to the relevant policy of the development plan. Yet this is clearly referenced within the reasons for refusal and the case is outlined in the Case Officer Report, supplemented by the Statement of Case. Thus, while not continually referenced, I am satisfied that sufficient regard was had to the development plan.

12. There is reference to the lack of engagement from the Council in respect of completing an agreed Statement of Common Ground. This is not a requirement for appeals proceeding by written representations and thus this is not a matter which I consider further.

13. The submission of an application for costs by the Council is also cited as unreasonable behaviour, by the appellant. Further to my findings above, I have considered the Council's application and found no unreasonable behaviour on the part of the appellant and thus no award of costs is justified. However, it is

the prerogative of the Council to seek such an award, as it is of the applicant in the case of this application. It is clearly the views of each party that costs should be awarded, a view with which I have disagreed. I do not consider that it was unreasonable of the Council to pursue this, despite my disagreement with its contentions.

14. In respect of Application B, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Conclusion

15. For the reasons given above, I find that both applications for an award of costs should be refused.

Martin Allen

INSPECTOR