The Planning Inspectorate

Costs Decision

Site visit made on 24 July 2024

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Costs application in relation to Appeal Ref: APP/C3240/W/24/3340770
Site off Roberts Road, Telford TF7 5JL

- 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 Micharon Homes for a partial award of costs against Telford and Wrekin Council.
- The appeal was against the refusal of planning permission for: 'Proposed residential development for the construction of 20 no. new dwellings with new estate road car parking and public open space'.

Decision

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

Reasons

2. 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.

3. The aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case; encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.

4. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of a substantive award of costs if they do not review their case promptly following the lodging of an appeal against refusal of planning permission, as part of sensible on-going case management.

5. The applicant's principal concern relates to the Council failing to request financial contributions towards infrastructure, prior to the determination of the application. The applicant sets out that these were not requested by the Council until the drafting of a Unilateral Undertaking (UU) after an appeal had been lodged. This led to the applicant having to instruct a Financial Viability Assessment (FVA) and instruct additional work in support of the appeal.

6. The Local Plan Appendix (the LP) sets out that new major residential development is expected to mitigate the cumulative impacts of development in a 'plan led' manner by contributing towards the provision of the following types of strategic infrastructure: Education; Emergency services; Leisure; Green

Infrastructure. These contributions are also referenced in LP Policies COM1, C3 and NE4. The contributions requested by the Council for this development reflect these matters and comprise of contributions towards primary and secondary education, parking restrictions, play facilities and sports and leisure facilities.

7. The Council's Report (delegated appraisal) references the latter two contributions but there is no reference to any education contribution. There is also no confirmation that all three contributions are necessary in order to make the development acceptable. Such an inclusion would be good practice, notwithstanding that it is clear from the LP that there is an expectation major development, such as this, will mitigate cumulative impacts by contributing towards the provision of strategic infrastructure, including education facilities, subject to viability.

8. The Council did not approach the applicant to discuss any financial contributions prior to the determination of the application, nor, however, did the applicant seek to enter into such discussions with the Council. I am therefore not convinced that the Council '*failed to give the appellant the opportunity to discuss the requested contributions during the application*' as set out in the applicant's costs application. Moreover, it is clear that the applicant was aware of the likelihood of required contributions as they approached the Council in this regard as part of their appeal submission.

9. Furthermore, there is no statutory duty on the Council to approach the applicant during the time the application is under consideration and the onus is principally on an applicant to familiarise themselves with what is required in support of their proposal. For the above reasons, I am therefore not convinced that, in not making contact with the applicant during the application to discuss contributions, the Council has demonstrated unreasonable behaviour as set out in the PPG.

10. Furthermore, had contributions been discussed during the application, there is nothing before me to indicate that the applicant would not have had concerns with regard to viability at that stage. As such, the applicant would likely have sought to submit an FVA during the application. As such, even if I took the view that the Council's behaviour in this regard was unreasonable, it does not seem to me that the applicant had been put to unnecessary or wasted expense in producing the FVA since they were undertaking work that they would have had to, had the matter been dealt with during the life of the planning application.

11. The Council requested an extension of time of an additional five days to comment on the FVA during the appeal. It subsequently confirmed within that time period that it was unable to offer comment due to being unable to engage an independent assessor. Whilst this is perhaps unhelpful, I am not convinced that this short extension of time to comment and the Council's failure to respond constitutes unreasonable behaviour, moreover, it is unclear how this matter would have led to any additional cost to the applicant at appeal.

Conclusion

12. For the above reasons I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Paul Martinson

INSPECTOR