Costs Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Costs application in relation to Appeal Ref: APP/J1535/W/24/3342224
Land to the south & east of the former Chimes Garden Centre, Nazeing, Waltham Abbey EN10 6RJ

- 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).
- An application was made by Epping Forest District Council for a full award of costs against Lifestyle Care & Community Ltd.
- The appeal was against the refusal of planning permission for redevelopment of the site to provide up to 52 later living apartments (Extra Care Housing) incorporating a convenience shop and café (use class E); 13 retirement cottages (Extra Care Housing); 10 self-build & custom build houses; 4 affordable houses, open space, bowling green, children's play area and improved local bus service; all matters reserved except access.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Paragraphs 51-54 of the PPG provide examples of behaviours which may lead to a procedural or substantive award of costs against an appellant.

4. The Council suggest it incurred unnecessary or wasted expense in the appeal process through engaging a relevant witness in a short amount of time to defend matters relating to the provision of affordable housing at the appeal.

5. The Council allege the appellant acted unreasonably as they withdrew the affordable housing offer on many occasions. The Council suggest the appellant had agreed the affordable housing sum and the matter of affordable housing did not form a reason for refusal.

6. However, the second reason for refusal, as set out on the decision notice, states "in the absence of a completed Section 106 planning obligation the proposed development fails to mitigate against the adverse impact that it will have on … provision of affordable housing…" and identified conflict with Policy H2 of the Epping Forest Local Plan 2023 which sets out a range of policy requirements relating to the affordable housing provision.

7. Irrespective of the appellant's stated position, at time of the Council's decision the proposal included no legal mechanism to secure affordable housing

provision in accordance with the development plan and the Council refused the scheme on this basis.

8. The Council suggest that it was only apparent from the Inspector's pre-hearing note, issued around two weeks prior to the hearing event, that the affordable housing sum would form a main issue for the appeal.

9. However, whilst the appellant's Statement of Case (SoC) expressed willing to provide an affordable housing contribution, the SoC clearly set out the appellant's view that the development would not viably support an affordable housing contribution, as concluded by the appellant's viability assessment. It was clear from the appellant's SoC that the scale of the affordable housing sum, and the viability evidence which underpinned it, remained in dispute during the appeal. Furthermore, at time of submission of the Council's SoC, no planning obligation had been provided to secure affordable housing. Therefore, matters in respect of the second reason for refusal had not materially changed.

10. Consequently, on receipt of the appellant's SoC it would have been apparent to the Council that affordable housing provision remained a matter in dispute. Therefore, it should not have been a surprise to the Council that affordable housing provision would form a main issue during the hearing.

11. Moreover, during the hearing, the Council's witness actively contributed to the structured discussion and played an important role in assisting the Inspector in understanding the Council's evidence. Therefore, whilst the Council incurred costs, this was neither unnecessary nor wasted.

12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Dade

INSPECTOR