



Costs Decision

Hearing Held on 26 June 2019

Site visit made on 25 and 26 June 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2019

Costs application in relation to Appeal Ref: APP/P0240/W/18/3210480 Former Shefford Lower School, land off Wynchwood Lane, Shefford SG17 5XA

- 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 Mr Troy Mayer on behalf of Black Horse Residential Ltd. for a full award of costs against Central Bedfordshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing building and erection of 7 new dwellings.
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Decision

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

The submissions for Mr Troy Mayer on behalf of Black Horse Residential Ltd.

2. The applicant claims that whilst the decision notice refers to a single policy, Policy DM3 of the Central Bedfordshire Core Strategy and Development Management Policies (CSDMP) 2009, the Council has provided no evidence as to why the proposal does not accord with this policy.
3. Furthermore, the Council have proposed the site for development from the marketing exercise. The approach taken by the local highway authority that the access of Wynchwood Lane is unsuitable would sterilise the site, which is an unreasonable turnaround on behalf of the Council

The response by Central Bedfordshire Council

4. The Council refute the applicant's first claim as Policy DM3 is clearly identified in the reason for refusal. Furthermore, it was not necessary to raise it in addition to the applicant's discussion on Policy DM3 during the hearing.
5. In response to the second claim, the Council state that the local planning authority and highway authority were not involved in the preparation of this evidence submitted at the marketing stage of the site. Furthermore, whilst the pre-application advice was in favour of the proposal, this does not prejudice the local planning authority's consideration of the formal submission of the application.

Reasons

6. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
7. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states that the proposal would conflict with Policy DM3 of the CSDMP. This reason was adequately substantiated by the Council in its statement of case, which demonstrates how the proposal would harm highway safety, with particular regard to visibility and access for refuse collection vehicles. Whilst the Council does not explicitly refer to DM3 in its statement of case, the applicant evidently identified the relevance of this policy, stating during the hearing that bullet point 8 was the relevant part of the policy, to which the Council agreed. By the inclusion of this Policy within the reason for refusal, and with bullet point 8 being the only relevant part of it to this proposal, it is clear to infer from this and their remaining evidence that the Council finds that the proposal does not incorporate appropriate access.
8. Therefore, in this regard, I do not consider that the Council have behaved unreasonably.
9. With regard to the second claim, the site was marketed by the Council. In support of this marketing exercise was a Transport Statement, prepared by PSP Consulting for Bidwells, on behalf of the Council's Estates Department. The statement identifies that there is adequate 2m x2m pedestrian visibility splays at the point of access from the site onto Wynchwood Lane. There is no indication as to whether the access off Wynchwood Lane onto Ampthill Road would be suitable. Nevertheless, the statement concludes that there will be no objection from the highway authority to the residential redevelopment of the site.
10. Following the applicant's purchase of the site, a pre-application enquiry was submitted to the Council for the demolition of the existing building and erection of 7 dwellings. In respect of issues pertaining to Highway Safety and Car Parking, the response was that the access route along Wynchwood Lane would be sufficient to allow two way traffic movements and with a footway of nearly 3m along Ampthill Road visibility at the junction meets design standards. I note that it does not specifically refer to driver/pedestrian or driver/driver inter-visibility. Nevertheless, given that these are fundamental highway safety considerations, it seems highly unlikely that both of these aspects were not considered.
11. There is no evidence that the development plan and any relevant guidance has changed since the marketing exercise was carried out and the pre-application advice given. The Council confirmed that the advice given was that of the individual officer at the time, who no longer works for the Council. Nevertheless, the advice given was on behalf of the Council. The appellant, understandably, submitted the application on the basis of this advice.
12. The current Council highways officer considers that the proposal does conflict with the development plan and relevant guidance. Whilst I appreciate that the pre-application advice is not binding upon the Council, it clearly indicates that

there would be no objection to the proposal on highways grounds. The sudden change in the Council's position, which stemmed purely from a change in the highways officer considering the proposal, as confirmed by the Council, resulted in the application being refused and the subject appeal being lodged. I find that this sudden change in position without any reasonable justification, other than a difference of professional opinion between two Council officers, amounts to unreasonable behaviour on behalf of the Council. Such behaviour provides a great deal of uncertainty to the developer, particularly in this instance as the application was submitted with a justifiable expectation that it would be approved.

13. As I have found that the proposal would not result in any significantly harmful effect on highway safety, as a result of this unreasonable behaviour the appellant has incurred unnecessary costs in the appeal process.

Conclusion

14. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Central Bedfordshire Council shall pay to Mr Troy Mayer on behalf of Black Horse Residential Ltd., the costs of the appeal proceedings described in the heading of this decision.
16. The applicant is now invited to submit to Central Bedfordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR