The Planning Inspectorate

Costs Decision

Site visit made on 25 October 2011

by Chris Hoult BA BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 November 2011

Costs application in relation to Appeal Ref: APP/K2420/X/11/2155849
15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Chartwell Care Limited for a full award of costs against Hinckley & Bosworth Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for the proposed use of a dwellinghouse as a children's care home.

Decision

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

Reasons

2. Paragraph A12 of Circular 03/2009 says that costs will normally be awarded where the party against whom the award is sought has acted unreasonably and the unreasonable behaviour has caused the party applying to incur unnecessary or wasted costs in the appeal process.

3. The issue relating to whether the Council behaved unreasonably revolves around the requirements of paragraph B20 of the Circular. It says that planning authorities are not bound to accept the recommendations of their officers. However, if they are not followed, they will need to show reasonable grounds for taking a contrary decision and produce relevant evidence on appeal (my emphasis) to support the decision in all respects.

4. I start by acknowledging that officers were clear in their advice to Members that planning merits are not for consideration in a LDC application and that, in their view, a material change of use of the property would not occur. I accept that, as set out in its appeal statement, the Council mounts a cogent defence of its decision to refuse to grant a LDC. No issue is taken with the Council's view in its response to the costs application that matters of judgment are involved in a s192 application, since the evidence on the ground is not before the decision-maker. However, regarding the overturning of the officers' recommendation, the evidence needs to be examined as to the reasons for it and therefore on what basis a LDC was refused. This relates to the "reasonable planning grounds" to which paragraph B20 refers and to which the Council's evidence at the appeal should relate.

5. The appellants' account of the sequence of events in the lead-in to and at the Planning Committee meeting which resulted in the recommendation being overturned is not disputed by the Council. At the meeting, the Committee had to hand a "late items" report which clarified certain aspects of the operation of

the home and summarised a series of objections from local residents. All the objections appear to relate to the planning merits of the use not to its lawfulness or otherwise. In the light of the points raised, officers considered it necessary to remind the Committee of its remit in dealing with an application of this kind. Nevertheless, the minutes of the meeting record that, first and foremost, Members had concerns about the impact on local residents, given problems which had occurred previously, which relates to the planning merits and indicates that they had their objections uppermost in their minds.

6. A discussion on the regulatory framework for the home is then recorded, followed by reference to Members' concerns that *"the planning system is at fault in suggesting that planning permission wasn't required for such changes of use"*. A request for representations to the Government is made. The wording which I have highlighted is ambiguous and no explanation of what is meant by it is given by the Council in its response to the costs application. Taking it at face value, it appears to relate to a concern that a use which can have the severe impacts claimed by local residents could nevertheless under the planning system not require planning permission. If that is so, it indicates that Members' concerns about the planning merits were again to the fore.

7. Finally, it is recorded that Members considered that the proposed use would be a material change of use. No reason for coming to this view is given. In responding to the costs application, the Council had an opportunity to explain its position. However, no explanation is forthcoming. At paragraphs 18 and 19 of its response, the Council skips from a description of those items which were before the Committee to the content of the Decision Notice without explaining how the one follows the other. The minutes make no reference to a concern regarding staff numbers let alone mount an explanation of why that led to a view that a material change of use was involved. A reference in paragraph 20 to the Stockport appeal decision is irrelevant to any understanding of how the decision was reached, as it was not anyway before the Committee.

8. In the light of this, I am inexorably drawn to the conclusion that the Council has behaved unreasonably. Reasonable planning grounds have not been shown for a decision taken contrary to officers' clear and repeated advice. The Council has not produced relevant evidence to support the decision in all respects. It is not enough for it to refer to the scope open to it for the exercise of judgment without explaining in what way it was exercised. While its appeal statement focuses on some uncertainty regarding staff numbers, there is no evidence that this played any part in the decision to refuse a LDC.

9. Furthermore, at the meeting, Members appear to have accepted without qualification objectors' claims regarding the impacts. If that is so, the Council appears also to have acted unreasonably having regard to the requirements of paragraph B21 of the Circular. This relates to the weight to be accorded to local opposition where it is not founded on valid reasons or supported by substantial evidence on the strict question of the lawfulness of the use.

10. Had the Council exercised its powers in line with the legislative provisions and officers' advice relating to LDC applications, it would have limited its considerations to questions of lawfulness. Any concern that a proposed use might have the potential for some or all of the impacts outlined by objectors and yet still be lawful could still have been the subject of a representation to the Government. However, all the evidence indicates that the Council attached undue weight to the objections and the ensuing concerns and made its decision

on an unreasonable basis. The appellants were therefore required to incur the cost of pursuing the matter to appeal for a determination by an Inspector, a course of action which would not have been necessary had the Council applied its judgment in accordance with the legislative provisions.

11. I therefore find, on the available evidence, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 Hinckley and Bosworth Borough Council shall pay to Chartwell Care Limited the costs of the appeal proceedings described in the heading of this decision.

13. The applicant is now invited to submit to Hinckley and Bosworth Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

C M Hoult

INSPECTOR