The Planning Inspectorate

Costs Decision

Site visit made on 18 January 2012

by Andrew Jeyes **BSc DipTP MRTPI**

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

Decision date: 26 January 2012

Costs application in relation to Appeal Ref: APP/K2420/A/11/2163009
3 Cleveland Road, Hinckley, Leicestershire LE10 0AJ

- 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 Sycamore Developments for a full award of costs against Hinckley & Bosworth Borough Council.
- The appeal was against the refusal of planning permission for an application for the extension to the time limit for implementing a planning permission for the demolition of existing dwelling and erection of 14 apartments with ancillary works (revised application).

Decision

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

Reasoning

2. Circular 03/2009[1] 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.

3. The appellant has referred to advice in Paragraph B12, but this relates to the need for adequate investigation prior to enforcement action, which is not the case here. However, Paragraph A12 sets out the broad parameters relating to the award of Costs and Paragraph A22 defines the meaning of unreasonable in the context of Costs applications.

4. In relation to validation, it is claimed that the Council were unreasonably obstructive. The submission to the Council indicated that viability of the development was a major issue and that a S106 obligation would not be submitted. The request from the Council for a viability assessment in these circumstances was reasonable and necessary, as otherwise, it would not have been possible to give weight to this matter in determining the application. The inclusion of current S106 requirements as part of the viability assessment was also reasonable, as was the Council's requirement that these should represent an up to date assessment. Without them, the true economic viability of the development could not be assessed.

5. Guidance[2] on submitting applications seeking to extend the time limit for an existing permission refers applicants to DCLG guidance note: *Greater Flexibility for Planning Permissions* 2009, which indicates that the Council can seek further information in support of the application and in this case the appellant had indicated that their was a material change in circumstances. This justifies the seeking of the further information.

[1] Circular 03/2009: *Costs awards in appeals and other planning proceedings.*
[2] GCLG: *Guidance on information requirements and validation*

6. The Council failed to validate immediately the application on submission of the viability information, but instead indicated that it was not possible to argue this as part of an application to extend the time limit for implementation. However, this was quickly resolved and the date of validation backdated to the time of submission of the viability submission, so it is difficult to see how any unnecessary or wasted expense arose.

7. In respect of determination, the original S106 obligation would be linked to the original planning permission. The Council would have determined the appeal application favourably if the appellant had agreed to a reduced contribution for play and open space only; this would have required a new S106 obligation as it would not be appropriate to link the original S106 via a simple supplementary deed. The Council indicate a telephone conversation where the appellant proposed to manuscript amend the original S106, although the appellant says this is fictional and did not take place. There is therefore no clear evidence of substance in relation to this point. The Council's request for a S106 obligation was in line with their intentions on determination, and the refusal of the appellant to agree to this proposal led to refusal of the application.

8. The reason of refusal refers to the lack of play and open space on-site or off-site and this was reasonable and logical taking account of the Council's requirements relating to their policy and their view that such play and open space was required. I have indicated that there would be little practical space on site to make adequate provision. As no provision of play and open space was indicated, the reason of refusal reasonable points to the overall deficiency, either on-site or off-site.

9. The fact that the Council accepted the details of the viability position advanced by the appellant does not mean that this automatically outweighs all other material considerations. The Council has to weigh this factor against other matters and, in their view, this did not outweigh the need for a contribution towards play and open space.

10. My decision indicates that the needs of both Councils and of the Primary Care Trust would satisfy the requirements of the CIL Regulations 2010 and the tests in Circular 05/2005[3]. They would be necessary to make the proposed development acceptable in planning terms, are directly related to the proposed development and fairly and reasonably related in scale and kind. However, I also indicate that these matters are outweighed by the lack of viability of the scheme, so that a requirement for financial contributions cannot be justified in the present economic circumstances. Whilst the appeal decision indicates that I have differed from the Council in the weight that I attribute to the need for contributions, this does not mean that the Council has acted unreasonably.

11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and the application for Costs is dismissed.

Andrew Jeyes

INSPECTOR

[3] Circular 05/2005: *Planning Obligations*