The Planning Inspectorate

Costs Decision

Inquiry opened on 14 January 2014
Site visit made on 15 January 2014

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 18 February 2014

Costs application in relation to Appeal Ref: APP/Q1445/A/13/2200978
Court Farm House, King George VI Avenue, Hove, East Sussex BN3 6XJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Thornton Properties Ltd for a full award of costs against Brighton & Hove City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for "Demolition of existing buildings. Construction of 5 no. two storey detached houses and a 58 bed space, two and three storey nursing home with associated landscaping, vehicle parking and external works. Alterations to the existing site access".
- The inquiry sat for 2 days on 14 and 15 January 2014.

Decision

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

The submissions for Thornton Properties Ltd

2. The costs application was made orally and submitted in writing at the inquiry.

3. Although the application is for a full award of costs, in accordance with paragraph A18 of the Circular, the award may be granted as a whole or in part. The Inspector is invited to look at the list of evidence referred to by the Council's witnesses on page 5 of the Council's Response to Costs Application. This should be assessed against paragraph B16 of the Circular.

4. After paragraph 17 of the Application for costs: It goes further than that. The alleged conflicts with draft policy are more imagined than real.

5. In conclusion, the case is made for an award of costs.

The response by Brighton & Hove City Council

6. The response was made orally and submitted in writing at the inquiry.

7. After the third paragraph on page 2 of the Response to Costs Application: Prior to the findings in May 2013, the objectively assessed need was 15,800; see paragraph 4.2 on page 128 of the *Brighton & Hove Submission City Plan Part One* (CP).

8. In conclusion, the Council has not acted unreasonably so no full or partial award of costs should be considered.

Reasons

9. Circular 03/2009 *Costs Awards in Appeals and other Planning Proceedings* 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 or wasted expense in the appeal process.

10. The application was made in a timely manner.

11. The appellant's planning statement submitted in October 2012 explained that its approach to the proposal, which included 5 houses, was that the Council could not demonstrate a 5-year supply of deliverable housing sites. My colleague's appeal decision ref APP/Q1445/A/12/2183454 supports the appellant's stance, but it is not very helpful to me because I do not know what evidence was put to my colleague. Nonetheless, the appellant's view was that Policies NC5 and NC6 of the *Brighton & Hove Local Plan 2005* (LP) were relevant policies for the supply of housing, which should not be considered up-to-date, and that the proposal should only be refused if any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. There was almost no analysis of the appellant's approach to the application in the report to committee and there was little evidence that this matter was discussed at the Planning Committee meeting in March 2013.

12. The Council considered that the conflicting reasons for refusal 1 and 2 were appropriate when the application was refused on 11 April 2013, because the statutory Development Plan policies were, and still are, extant, and the policies in the CP were subject to consultation. There could be no certainty that the CP would be found sound, or that CP Policy DA7 would progress. There were different approaches to the site in the 2 Plans. A reason for refusal could be withdrawn if there were to be a material change in circumstances.

13. The Council's concerns in reason for refusal 3 were capable of being overcome by means of a planning obligation, and, in the event, a condition. The appellant had been content to provide the obligation since about March 2013.

14. The CP, which is dated February 2013, was submitted for Examination in June 2013. The appeal was made on 1 July 2013. In accordance with paragraph 215 of the *National Planning Policy Framework* (Framework), and having regard to the Council's LP - Framework compatibility assessment of 2012, the Council considered LP Policies NC5 and NC6 to be fully consistent with the Framework. The Council's view was that LP Policies NC5 and NC6 were not relevant policies for the supply of housing. The Council considered that it had a 5-year supply of deliverable housing sites because, amongst other things, it had used a ramped approach to housing delivery. Whether or not that was the right approach for the CP, the Council has provided some explanation for its view during the early part of the appeal process.

15. An Examination Hearing for the CP took place in October 2013. The Examining Inspector wrote to the Council on 13 December 2013. With regard to paragraph A28 of the Circular, and in the light of the Inspector's letter, the Council reviewed reason for refusal 1 and concluded that it should no longer be defended. The Council withdrew reason for refusal 1 by letter of 16 December 2013. However, the Council did not provide a clear explanation of its reasons for doing so until the inquiry.

16. At the inquiry the Council and the appellant said that the Council has about 4.5 years and about 1.8 years housing land supply respectively. However, it was common ground that the Council could not demonstrate a five-year supply of deliverable housing sites. Therefore, relevant policies for the supply of housing should not be considered up-to-date.

17. Nonetheless, at 16 December 2013 the Development Plan was effectively absent (as opposed to relevant policies being out-of-date), because the Council's concerns in reason for refusal 3 could be overcome, and its concerns in relation to Development Plan policy in reason for refusal 1 had been withdrawn. However, there was little evidence that the Council had actively reviewed its case with regard to reason for refusal 2.

18. The Council considered that the Examining Inspector's letter may strengthen its case for the proposed allocation of the DA7 development area (DA7), but the progress of the CP would be delayed. There was almost no evidence that the proposal had been actively reviewed by the Council in the context of the presumption in favour of sustainable development at this time, or since then. There was little evidence that the benefits of the development had been assessed and weighed in the balance against the alleged possible adverse impacts on the aims of emerging CP Policy DA7 referred to in reason for refusal 2.

19. With regard to reason for refusal 2, paragraph B16 explains that the planning authority's decision notice should be carefully framed and should set out in full the reasons for refusal. CP Policy DA7 does not require the 'comprehensive' development of the proposed allocated site, which is in 2 separate ownerships. In the absence of an adopted policy saying so, the reference to 'comprehensive' in reason for refusal 2 was not reasonable.

20. Paragraph B16 also explains that authorities will be expected to produce evidence to show clearly why the development cannot be permitted. The Council's evidence was contradictory because it says that the residential density would fall well below the range of 50 to 75 dwellings per hectare in emerging CP Policy DA7. However, the Council's witness preferred Class B1 uses at the appeal site, so the residential density would be lower still, at nil.

21. Furthermore, CP Policy DA7 seeks at least 50% family sized dwellings with 3 or more bedrooms. Five 4-bedroom family houses with gardens would be expected to take up more land than, say, 5 studio flats, so the density would not be expected to be uniform across DA7. There was little evidence that the Council had assessed the constraints and opportunities at the appeal site, which would also affect the density. Moreover, there was almost no assessment of DA7 by the Council to show that the number and type of dwellings at the appeal site would have an adverse effect on the overall density in DA7, when the supporting text advocates a mix of housing types and sizes to achieve a choice in the range of housing.

22. The effective and efficient use of the appeal site was not a concern of the Council in its reason for refusal 2. It was not raised until the Council's Statement of Case. Even so, the Council provided almost no evidence to substantiate its concerns about the alleged unacceptable underuse of the site.

23. The Council's witnesses accepted that a care home with nursing (care home) could be acceptable within DA7. The appeal site was not the Council's

witness's preferred location for it. However, the planning brief referred to in the CP Policy DA7 was not ready for public consultation, and the Council's view that Class B1 uses at the appeal site 'may' be optimal was unsupported by credible evidence. The Council did not substantiate its apparent view that the amenity requirements of office workers in the proposed high tech modern offices would be different to those of the elderly persons and workers in the care home or occupiers of the dwellings. Little tangible evidence, such as road layouts, was put to me by the Council to show that the access to part of the Class B1 floorspace at the appeal site would be 'good' in comparison to other locations in DA7. Furthermore, as the Council's witness accepted that all of the Class B1 floorspace could be provided within the adjoining site close to the A27, the Council failed to substantiate how the additional jobs at the care home would have an adverse effect.

24. There was little realistic evidence of any adverse impact that the density and uses proposed would have on the aims of the emerging Policy. There was also little evidence that the Council had approached the proposal in a positive way or that it had looked for solutions rather than problems, as advocated by the Framework.

25. For all of these reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that an award of costs to cover the period from 16 December 2013 up to and including the inquiry is justified.

Costs Order

26. 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 Brighton & Hove City Council shall pay to Thornton Properties Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from 16 December 2013 onwards.

27. The applicant is now invited to submit to Brighton & Hove City 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.

Joanna Reid

INSPECTOR