The Planning Inspectorate

Costs Decision

Inquiry Held on 27-30 April, 4-7, 11 and 12 May 2021
Site visit made on 10 May 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Costs application in relation to Appeal Ref: APP/Q3115/W/20/3265861
Little Sparrows, Sonning Common, Oxfordshire RG4 9NY

- 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 South Oxfordshire District Council for a partial award of costs against Senior Living (Sonning Common) Limited and Investfront Ltd.
- The inquiry was in connection with an appeal against the refusal of planning permission. The development proposed is a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas.

Decision

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

Reasons

2. The *Planning Practice Guidance* 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. This is an application for a partial award of costs. The application is made in respect of the costs incurred by the Council in responding to the Appellant's case on viability.

4. The Council claimed that the Rectory Homes decision on 31 July 2020[1] determined the meaning and effect of Policy CSH3 of the South Oxfordshire Core Strategy (2012). Thereafter, it is argued, that it was incumbent on the Appellant to make appropriate affordable housing provision or explain why this could not be done. Subsequently, it is contended that the South Oxfordshire Local Plan 2011-2035 (SOLP) was adopted on 10 December 2020 and Policy CSH3 of the Core Strategy was replaced by Policy H9 of the SOLP, which also required the provision of affordable housing for C2 schemes of development. The Council maintained that the appeal was lodged on 22 December 2020 and the Appellant's position was that the proposed development could not bear the burden of the affordable housing provision. As the Council disagreed it obtained

[1] CD: I3

expert viability evidence to challenge the Appellant's case. The Council alleged that the Appellant then changed its position on viability making a policy compliant contribution towards affordable housing very late in the day on the Friday before the Inquiry opened. That rendered the Council's evidence superfluous. It is claimed that the Appellant behaved unreasonably in relation to the viability issue causing the Council to incur the wasted cost of addressing this issue including the cost of engaging a viability consultant.

5. I disagree with the costs claim for several reasons. Firstly, the scheme was conceived, and the land deal done at a time when extra care proposals were not required to pay affordable housing contributions. The Retirement Villages scheme at Lower Shiplake[2] was allowed making no affordable housing contribution. The Rectory Homes judgment relied upon referred to "dwellings" whereas the Retirement Villages scheme referred to "units". That was relevant to how the policy was interpreted by the Court. The Rectory Homes judgment was therefore not a bar on bringing forward a proposal for extra care without affordable housing. The point was certainly arguable.

6. Secondly, there was plainly much uncertainty around the adoption of the SOLP and therefore Policy H9 which requires affordable housing for C2 uses. The Appellant submitted viability evidence. This was submitted well before the exchange of proofs of evidence. That evidence showed that the appeal proposal would be unviable if affordable housing was provided. Discussions took place over the viability evidence and an offer was made to the Council but there was no confirmation that affordable housing provision could be met by a financial contribution until 8 April 2021. Moreover, there was little agreement on baseline information and the Council did not respond to the original offer. It seems to me that the Council was unwilling to discuss anything other than a fully compliant level of affordable housing even though Policy H9 indicates that other levels of affordable housing may be considered.

7. Thirdly, it is clear to me from the evidence of Mr Garside that the scheme is not technically viable. It does not give the landowners the return which would be achievable if the land were sold for market housing and a compliant level of affordable housing. The landowners have agreed to significantly reduce their expectation for the value of their land. The reduction they have accepted is £5m below what could be expected from selling the land to a housebuilder with a compliant level of affordable housing. That is because the site is in the AONB. The Appellant has also accepted a reduction of £2.5m in profit. That is a reduction below the 15-20% developer profit advocated in the PPG. Both the landowners and the Appellant have done this in order to deliver affordable housing with market extra care as part of its exceptional circumstances case.

8. Fourthly, I consider that neither the Appellant nor the landowners can be criticised for adopting the position they have. They would have been entitled to argue the viability issue had they wished to do so, and this is provided for in Policy H9. The Council would have had to address that case. However, the Appellant and landowners took the view that they could show their scheme was exceptional because it could deliver extra care with affordable housing if they accepted below market levels for the land and the developer profit. There is no evidence that anyone else will.

9. Taking all of these factors into account I consider that the decision not to

[2] CD: J.11

pursue the viability issue at the Inquiry was not unreasonable. From all the evidence that has been submitted I do not conclude that unreasonable behaviour has been demonstrated. It follows that unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been incurred.

Harold Stephens

INSPECTOR