

Costs Decision

Site visit made on 17 March 2013

by Isobel McCretton BA(Hons) MRTPI

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

Decision date: 28 April 2014

**Costs application in relation to Appeal Ref: APP/J1535/A/13/2206643
The Green Man Public House, Broomstick Hall Road, Waltham Abbey EN9 1NH**

- 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 Churchill Retirement Living for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of the Council to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Preliminary Matters

2. The application for costs was made prior to the publication of the Planning Practice Guidance (practice guidance) by the Government on 6 March 2014. As such, it was made on the basis of Circular 03/2009, which has been superseded. However, having regard to the submissions, I am satisfied that no party's interests will be prejudiced by my judging the application and the response against the practice guidance.

Reasons

3. The practice 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 or wasted expense in the appeal process. It indicates that a local planning authority may be at risk of a substantive award of costs against it if it imposes a condition which does not accord with one of the six tests for conditions set out elsewhere in the practice guidance. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party.
4. The submitted scheme showed 10 spaces. After initial consideration by the Area Plans Sub-Committee where Members expressed concern about the number of parking spaces, an amended layout was submitted which showed 12, the maximum which the appellants considered could be accommodated on the site. The Council accepted that a significant departure from its normal

standard (35 spaces) was appropriate given the location and nature of the development and the scheme was recommended for approval by Officers. However, no justification of the actual number of spaces sought by the full Committee as a compromise solution (i.e. 15) has been given.

5. The condition was not reasonable in that it was not known whether it was feasible to provide the additional 5 parking spaces sought by the Council when it was imposed.
6. In addition, the appellant had produced evidence to show that, in their experience as developers of the type of sheltered accommodation proposed, the number of spaces required by the Council would not be necessary. The Council has not refuted this evidence. The appellant commissioned a review of the scheme for the appeal and concluded that it was only feasible to provide 12 spaces. While the Council states that not all options were explored, there is no explanation as to how this study was deficient.
7. Moreover, it is a long established principle that Members do not have to accept the advice of their Officers but must show good planning reasons for not so doing. It is stated that Members relied on local knowledge about the site, local roads and public transport and concluded that the development, with the level of parking proposed, would be likely to result in increased on-street parking to the detriment of the amenity of the area and highway safety. Nonetheless, no substantiated evidence has been adduced to demonstrate that on-street parking in the surrounding roads is a problem, and that the impact of parking 3 additional cars (i.e. the difference between the number sought through the condition and the number shown in the revised scheme) would result in conditions prejudicial to highway safety (the reason given for the imposition of the condition).
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the practice guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Epping Forest District Council shall pay to Churchill Retirement Living, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to, 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.

Isobel McCretton

INSPECTOR