
Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 02/07/19

gan K Sheffield BA(Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06.08.2019

Costs Decision

Site visit made on 02/07/19

by K Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 06.08.2019

Costs application in relation to Appeal Ref: APP/H6955/A/19/3226729

Site address: Henblas Square, 1 Henblas Street, Wrexham, LL13 8AE

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.
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- The application is made under the Town and Country Planning Act 1990, sections 78, 322c and Schedule 6.
 - The application is made by The Mandale Group for a full award of costs against Wrexham County Borough Council.
 - The appeal was against the refusal of planning permission for the conversion of existing first floor and construction of mezzanine floors to create 53no. residential apartments (51no. one bedroom and 2no. two bedroom), associated works and external alterations.
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Decision

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

Procedural Matter

2. In making the application instead of having regard to the Development Management Manual Section 12 Annex: Award of Costs (the Annex), the Applicant cited Planning Policy Guidance which is not in force in Wales. However, the matter was rectified in later correspondence¹ and I am satisfied that the grounds on which the application has been made are covered by the Annex.

The Case for The Mandale Group (the Applicant)

3. Planning permission was granted for the development, subject to the preparation and signing of a Section 106 Agreement in respect of the provision of affordable housing. The initial Viability Appraisal of November 2018 projected a 16% profit with no affordable housing contribution. It was therefore proposed to pay the Council £28,816 as an off-site contribution, it being the additional profit above the standard reasonable developer profit of 15%. Whilst the findings of the Appraisal were accepted by officers, the Council considered that as development had commenced on site actual rather than projected figures could be used. In the updated appraisal of March 2019 the projected profit for the scheme was reduced to just over 8%. The Applicant accepted that the scheme would generate a lower profit. Officers accepted the findings of the updated appraisal and recommended approval of the application.

¹ Response to the Appeal Statement made by the Council, dated 19 June 2019

4. In refusing permission the Council went against the advice of its officers without any reasoned justification. The Council chose not to accept the updated appraisal despite having no evidence of its own to dispute its contents, a fact highlighted by officers. Furthermore, the Council declined the Applicant's offer to have the appraisal independently verified.
5. The Council failed to apply its own development plan policies and guidance appropriately. Policy H7 of the Wrexham Unitary Development Plan (UDP) refers to negotiating with developers to provide an element of affordable housing in new proposals of 25 units or more. In cases where the viability of a development is genuinely threatened, the Council's Local Planning Guidance (LPG) Note 24 enables developers to provide a full viability assessment when they are proposing to provide affordable housing at a rate of less than 25%. Since the development has a projected profit of 8% the developer is entitled to submit a viability appraisal. This is reinforced by the fact that if a policy compliant level of affordable housing was provided the development would make a loss.
6. The Council relied on a reason for refusal which does not stand up to scrutiny on the planning merits of the case. It has failed to produce any evidence to substantiate the reason for refusal, choosing not to believe the figures in the appraisal despite acceptance of them by its professional advisers. It has prevented development which clearly should have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. The Applicant is therefore seeking a full award of costs against the Council on the grounds of unreasonable behaviour which has caused the Applicant to incur unnecessary expense in the appeal process.

Response by Wrexham County Borough Council

7. The Council's resolution to grant planning permission despite the lack of on-site parking demonstrates its willingness to try to accommodate the developer and its commitment to securing the redevelopment and regeneration of the appeal site. Whilst the Council was aware at the time it made its decision that the Applicant was looking at the viability of the scheme, the need for a legal agreement was not challenged and the Council had no reason to doubt that the affordable housing provision would be forthcoming. Therefore, the Council did not act unreasonably in its assumption that the scheme was viable at the time the original decision on the application was taken.
8. The Viability Appraisal was not presented to the Council until after the resolution to grant permission had been passed. The Applicant presented notional figures showing an estimated profit of around 16% and offered the difference between the estimated profit and the deemed acceptable profit (1%) as a commuted sum for off-site affordable housing. In the light of press reports which indicated that the flats had sold for significantly less than the sum claimed by the Applicant, the Council questioned the accuracy of the figures given in the appraisal. The Council therefore acted reasonably in requesting the submission of an updated appraisal based on actual figures known to be available.
9. The updated appraisal more accurately reflected actual costs and showed a drastically reduced profit of 8%. However, the Council was concerned that there were errors in the appraisal which made a difference in terms of actual profit. The initial profit would have been 18% not 16% making it more difficult for the Appellant to argue for the removal of the affordable housing contribution. The revised costs are substantially

different from the original ones which raised concerns regarding the evidential base upon which the Council had based its original decision.

10. Acceptable profit and viability is an important consideration and the Council did not act unreasonably in its lack of confidence in the Applicant in terms of the accuracy of the figures presented which led to the subsequent refusal of the planning application. The issue of viability should have been thoroughly and accurately addressed as part of the application. In not doing so the reduced commuted sum for affordable housing was not properly justified and based on the information before it the Council had no option but to refuse planning permission.
11. The issue of whether the benefits of the development outweigh the harm that would be caused by the lack of affordable housing provision is a fine balance. Policy H7 of the UDP lays out a clear and accepted policy requirement and in this instance the Council considers that although the development may not be viable, the harm caused by the implementation of the development is of greater importance. The Council is entitled to take this view in giving due consideration to the development plan in force and for this reason it considers that no unreasonable behaviour has been demonstrated.

Reasons

12. The Annex advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. The Council was aware that the Applicant was considering the viability of the development when it took the resolution to grant planning permission. Although at the time it had not been confirmed that the scheme would not be viable if a policy compliant level of affordable housing was provided, the Applicant had advised the Council that the viability of the development without any contributions was marginal².
14. The Council's concerns regarding the contents of the original appraisal appear to stem from press reports which indicated that the flats had sold for significantly less than the sum claimed by the Applicant. The Council's professional advisors found the contents of the original appraisal to be acceptable and as recorded in the appeal decision the errors contended by the Council in its appeal submission are unfounded. The Council has not submitted copies of the press reports for consideration. Furthermore it has not provided any substantive evidence to confirm that the sale prices realised for the units differ from the figures given in the appraisals or are significantly less than expected in the area.
15. Given that a start had been made on site it was not unreasonable of the Council to request an updated appraisal based on actual rather than projected costs. I acknowledge that the updated appraisal indicates a significantly reduced profit. Nevertheless I have found it to be a fair assessment of the financial viability of the scheme.
16. In reaching its final decision to refuse planning permission the Council acted in response to its concerns regarding the accuracy of the figures in the appraisals. However, these concerns appear to be based in part on the unfounded claims made against the original appraisal and which it considered gave it reason to doubt the conclusions of the updated appraisal and finally gave rise to the Council's decision that

² By e-mail dated 30 October 2018

a reduced commuted sum was not justified. I consider that the Council acted unreasonably in having regard to the original appraisal when an updated version had been provided at its request and which, being based on actual costs, provided a more accurate account of the viability of the scheme. Furthermore, given its concerns regarding the accuracy of the appraisal, I consider the Council was also unreasonable in refusing the Applicant's offer to have the appraisal independently verified.

17. In refusing planning permission the Council also placed weight on the lack of on-site car parking. No objection on these grounds had been raised by its professional advisors and no justification for taking a different stance was given by the Council in its appeal submissions.
18. It is acknowledged that Members of the Council are entitled to take a different view from officers. However, in doing so, the Council is expected to demonstrate that it had reasonable planning grounds for taking a decision contrary to such advice and produce relevant evidence to support its decision. I am not satisfied by the evidence that the Council has demonstrated that the Viability Appraisals were inaccurate and there is no substantive evidence of the harm a reduced commuted sum would cause to the supply of affordable housing and why this warranted the stance the Council took. On this basis I do not consider that the Council has shown reasonable planning grounds for taking a decision contrary to the advice of its officers or produced relevant evidence sufficient to justify its decision. I therefore conclude that the Council has acted unreasonably having regard to the advice contained in the Annex and an award of costs is justified.

Costs Order

19. In exercise of the powers under section 322c 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 Wrexham County Borough Council shall pay to The Mandale Group, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts if not agreed.
20. The Applicant is now invited to submit to Wrexham County Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

K Sheffield

INSPECTOR