

Costs Decision

Inquiry held on 10 February 2004

Site visit made on 11 February 2004

by **Anthony Thickett BA(Hons) BTP MRTPI DipRSA**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date **27/MAR 2004**

Costs application in relation to Appeal Ref: APP/B3438/A/03/1133238

Land at Uttoxeter Road, Blythe Bridge, Staffordshire, ST11 9JR

- 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 Cameron Homes Ltd for a full award of costs against Staffordshire Moorlands District Council.
- The inquiry was in connection with an appeal against the refusal of the Council to approve of details pursuant to condition No. 1 of outline planning permission Ref. APP/B3438/A/02/1082534 for the erection of 45 dwellings.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Cameron Homes Ltd

1. The Council has acted contrary to the advice in paragraphs 8 and 9 of Annex C to Circular 8/93. There is no reference to public open space in the reason for refusal nor any reference to the relevant policies. It was unclear as to the extent public open space was part of the Council's case and the reason for refusal is, therefore, neither complete, precise or specific. The Council fall foul of paragraph 8 to Annex C, it is an immaterial consideration and as a matter of law irrelevant. The evidence regarding public open space was unreasonably produced and was misconceived. The opportunity for raising the issue was at outline stage. Council officers knew this and did so but failed to persuade the Inspector in that case and then did not pursue it at this stage.
2. With respect to private open space the Council failed to apply its own policies correctly. The majority of the proposed houses meet the Council's standard which, in any event, is out of date and should be applied flexibly. There is no sensible evidence to demonstrate that open space is inadequate. The proposal includes incidental open space and it is agreed to provide an attractive setting.
3. The Council's case regarding car parking is the antithesis of national government advice and is based on out of date Local Plan policies. There is no evidence to justify providing more spaces than set out in national policy. The Council's approach flies in the face of Government advice and shelters behind a policy which has been superseded. The Council's case regarding the impact of the proposal on character and appearance is based on a feeling and not supported by objective analysis or any detailed illustration.
4. Members are not bound to adopt officers' advice but the reality is that they have a quasi-judicial role, they have to be responsible and cannot do as they like. The costs regime makes it plain that there are parameters, in particular when decisions are made against professional advice.

The Response by Staffordshire Moorlands District Council

5. Members are not bound to adopt the advice of their officers. The Committee was not concerned with the principle of development but with matters of detail. Open space, car parking and the relationship of the proposal to its surroundings are all material considerations.
6. The arguments relating to the amount of public open space must be material, it is important and as far as the Council is concerned, the scheme gives a nod in the right direction but does not go far enough. The appellant is correct to say that public open space is not referred to in the reason for refusal but it was appropriate to take it on board with regard to the appeal.
7. The amount of private amenity space does not meet the Council's standards. Some properties have none and some fail to meet the standard. The proposed shared amenity space is also constrained. All these matters are relevant and material and supported by evidence.
8. The Council is also right to be concerned with regards to parking. It is questionable that it would be sufficient to meet the needs of residents, visitors and service vehicles. Evidence is produced to show that the proposed parking does not accord with the Local Plan. The emerging Local Plan proposes reducing standards but it would not extend to Blythe Bridge.
9. The Council's officers reached a view regarding the impact of the proposal on the character and appearance of the area but the Committee was entitled, after visiting the site, looking at the plans and listening to arguments, to reach a different conclusion. This view is supported by professional evidence regarding size, massing, and the relationship of the proposal with the street scene. Density is also an issue and evidence is put forward that it would not be at a level common to Blythe Bridge. The site could be developed at a lower density.
10. The Council was right to refuse the application and it would be inappropriate for the Council to pay costs in relation to matters of real concern.

Conclusions

11. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
12. The Council concede that the lack of public open space is not referred to in the reason for refusal. Indeed, it does not appear in the Rule 6 statement but was submitted later as an addendum. The alleged lack of open space and inadequate parking are cited in the reason for refusal in support of the contention that the proposal represents over development of the site. There is nothing in the reason for refusal or in the Rule 6 statement to suggest that these matters were relevant to any other issue than the impact of the proposal on the character and appearance of the area. However, in the Council's proof of evidence and at the Inquiry the Council sought to argue that a number of gardens would not provide a satisfactory standard of living for prospective residents. It was also argued that the failure to meet the Council's parking standards would be detrimental to highway safety. The reason for refusal is, therefore, neither complete, specific or precise and the Council have acted contrary to the advice in paragraph 8 of Annex C to the Circular.

13. This appeal relates to an application for reserved matters. Planning permission was granted for residential development without any requirement for public open space either on or off site. It is not appropriate to raise such a fundamental issue at this stage and it was unreasonable of the Council to do so. In addition, even if it were appropriate to raise it now, the Council failed to provide any evidence to support the contention that there is a deficiency in the quantity or quality of open space in the area or that the proposal would have a material impact on local needs. I find, therefore, that the Council failed to provide evidence to substantiate its case in this regard.
14. The development plan is the starting point for any decision maker but the Council rely on policies and standards which have been overtaken by national guidance. In applying the Local Plan standards on private amenity space and parking the Council have failed to give due regard to the advice in paragraph 54 of Planning Policy Guidance Note 1, General Policy and Principles (PPG1) and paragraph 38 of Planning Policy Guidance Note 3, Housing (PPG3). The Council's witness conceded at the Inquiry that the gardens would be usable and, in my view, failed to substantiate harm in this regard.
15. Turning to parking, I have neither seen nor heard any evidence to show that members had reasonable grounds for not adopting the advice of their own officers and the Highway Authority. Nor have I seen anything to show that regard was given to national policy as set out in PPG3 and Planning Policy Guidance Note 13, Transport (PPG13). The Council are concerned that the proposal may lead to parking along Uttoxeter Road but provide nothing to substantiate this.
16. The impact of the proposal on the character and appearance of the area is to some extent a matter of judgement but it must be supported by objective analysis. In support of their case the Council draw my attention to national and local policy and the differences between the proposed development and the existing built form in Blythe Bridge. Although I come to a different view, I consider that the Council have produced sufficient evidence to substantiate their case in this regard.
17. I conclude, therefore, that a full award of costs is not justified. However, I find that the shortcomings of the reason for refusal described above and the Council's failure to substantiate its case with regard to public open space, open space and parking warrant a partial award. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that a partial award of costs is justified.

Formal Decision and Costs Order

18. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that Staffordshire Moorlands District Council shall pay to Cameron Homes Ltd, the costs of the appeal proceedings limited to those costs incurred in refuting that part of the Council's case relating to public open space, open space and parking, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of the Council to approve of details pursuant to condition No. 1 of outline planning permission Ref. APP/B3438/A/02/1082534 for the erection of 45

dwelling at Land at Uttoxeter Road, Blythe Bridge, Staffordshire, ST11 9JR. The reason for refusal is:

1. The proposed development represents over development of the site as evidenced by the lack of open space and inadequate parking provision. In addition the proposed design in particular the 2½/3 storey dwellings are considered to be out of keeping with the character of the area and represent an unacceptable form of development contrary to Policy B13 of the Staffordshire Moorlands Local Plan.
19. The applicant is now invited to submit to Staffordshire Moorlands District 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 Supreme Court Costs Office is enclosed.

A. Thickett

Inspector