
Costs Decision

Site visit made on 25 October 2016

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Decision date: 25 November 2016

Costs application in relation to Appeal Ref: APP/W0340/S/16/3153625 Crookham House, Crookham Common, Thatcham, Berkshire RG19 8DQ

- 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 Bridgewood plc for a full award of costs against West Berkshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the variation of a planning obligation by the removal of the affordable housing requirements.
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Decision

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

Reasons

2. 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. The Council put forward a strong policy basis for seeking affordable housing, and this was reflected in the planning obligation which was concluded. However, given that both parties now accept that the scheme is unviable if the affordable element of the obligation remains, the issue is whether it is reasonable that the requirement should be deleted and an overage clause inserted.
 4. I am conscious that Council officers, mindful of the advice the authority had received, did not recommend the insertion of an overage clause. In itself, for the Council to overturn a recommendation is not unreasonable, but the authority must be able to produce evidence to substantiate its position on appeal. In particular, the authority could be held to have acted unreasonably if it prevented or delayed development in the light of the development plan, national policy and any other material considerations.
 5. In this case, as set out in my decision on the appeal, there is no development plan or national policy which supports the introduction of an overage clause. The only reference could be in Planning Practice Guidance but, as I set out in my decision, this relates to phased developments. There is no evidence that this is a phased scheme, rather it is a smaller development which would simply follow a sequence of events.
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6. In addition to the lack of any policy or guidance, at any level, which supports the Council's position, the approach of the authority adds a significant level of uncertainty. No detail of a proposed overage arrangement has been put forward by the Council, and this would therefore be left to further negotiations between the parties. This is an unreasonable approach which would cause further delay and uncertainty – which is precisely what the S106BC process is designed to avoid.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

8. 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 West Berkshire Council shall pay to Bridgewood plc the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to West Berkshire 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.

P. J. G. Ware

Inspector