
Costs Decision

Site visit made on 27 March 2017

by Veronica Bond LLB (Hons), Solicitor (non-practising)

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

Decision date: 24th April 2017

Costs application in relation to Appeal Ref: APP/U1105/W/16/3165906 Rolle College Playing Field, Douglas Avenue, Exmouth EX8 2HA

- 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 Mr Bill Richardson of Blue Cedar Homes for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for 'outline planning application (all matters reserved except for access) for the upgrading of the former Rolle College playing pitches, development of changing pavilion, associated playing pitch (access via Maer Road Car Park), plus development of up to 23 age-restricted dwellings to be accessed via Douglas Avenue' without complying with a condition attached to planning permission Ref 16/0787/MOUT, dated 26 August 2016.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the 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 basis for the appellant's costs application is essentially that the Council: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and has required that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations; and has acted contrary to, or not followed, well-established case law – specifically that requiring the Council to have regard to material considerations in its determination.
4. As to the first ground cited, I have found in favour of the appellant in respect of the main issue in the appeal. This does not automatically lead though to an inference of unreasonable behaviour on the part of the Council. My assessment was essentially that the wording of the relevant local plan policy requiring an overage clause was drafted in sufficiently broad terms to allow for a form of delayed overage, and that the appellant had demonstrated delayed overage to be more appropriate in this case due essentially to funding difficulties related to an immediate overage clause.

5. Clearly, the wording of the local plan policy would also allow for immediate overage as proposed for the Council. It was therefore a matter of judgment as to whether it had been adequately demonstrated that delayed overage would be more appropriate in this case. As such, it was not unreasonable for the Council to form a different view on this as a matter of judgment.
6. With respect to the second and third grounds cited, there is no detailed evidence to suggest that the form of planning obligation requested by the Council would be unlawful. As regards its accordance with national policy the Council clearly makes reference to both the National Planning Policy Framework, and the Guidance in its representations but explains its basis for departing from the provisions of these.
7. Although reference is not specifically made in the Council's statement to the Council's Viability Guidance Note, the Council has sought to explain the most up-to-date position by reference to the Strategic Planning Committee having recently re-endorsed the requirement for immediate overage.
8. I recognise the efforts gone to by the appellant to seek to avoid an appeal. Equally though it is apparent that the Council has gone to significant effort to seek to properly justify its stance.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

Veronica Bond

INSPECTOR