



Costs Decision

Inquiry Held on 6 - 9 June 2017

Site visit made on 6 June 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 30 August 2017

Costs application in relation to Appeal Ref: APP/C3240/W/16/3162166 Land south of Wellington Road, Muxton, Telford

- 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 Seabridge Developments limited for a partial award of costs against West Mercia Police.
 - The inquiry was in connection with an appeal against the failure of Telford and Wrekin Council to issue a notice of their decision within the prescribed period on an application for planning permission for outline application for residential development of up to 150 dwellings and associated access, with all other matters reserved.
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Decision

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

Procedural Matters

2. The costs application was made in writing at the Inquiry and added to orally following the orally given response from West Mercia Police (WMP).
3. The Inquiry was adjourned on 9 June 2017 and closed in writing on 18 July 2017. During this period, there was a flurry of correspondence from the appellant, WMP and the Council, which included information relating to previous letters and emails between these three parties dating back to around the time of the planning application. I have taken all of this into account in reaching my decision.
4. A technical issue resulted in a substantial amount of information from WMP not reaching me prior to the Inquiry. This was, however, presented in hard copy format on the final day of the Inquiry. It has now been confirmed that the information was sent to PINS from WMP via the Council.

The submissions for Seabridge Developments Limited

5. The appellant submits that WMP are fully familiar with the appeals procedure and guidance and obtained Rule 6 Party status in relation to a previous appeal at Kestrel Close, Newport. It is argued that WMP have behaved unreasonably for the following reasons:
 - in this appeal, in contrast, WMP did not make any representations as part of the appeal process or make any contact with the appellant until the opening day of the Inquiry

- as a result, costs have been incurred because further work has had to be undertaken to consider the request made by WMP for a financial contribution and prepare a new Section 106 Unilateral Undertaking (UU)
- had WMP made their position clear earlier in the appeal process in accordance with the procedural rules such work could have been avoided and if agreeing to accept the contribution, the obligation could have been included in the first UU along with the other contributions therein
- WMP have blatantly disregarded the procedural rules

The response by WMP

6. WMP state that the appellant was made aware of their request in June 2016 and argue that:
 - the Council was fully aware of the request and should have passed this information on to the appellant
 - WMP were not party to the UU so the onus is not on them to chase the inclusion of the requested contribution within the UU obligations
 - on the first day of the Inquiry, the appellant confirmed that there was no issue with including WMP's requested contribution in the UU but then changed this position at the Section 106 discussion on the last day of the Inquiry

Reasons

7. National 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.
8. In this case, the appellant maintains that WMP have not entered into dialogue that could have resulted in the requested contribution being included in the planning obligations presented to the Inquiry.
9. Having explored the background to the matter, I note that WMP were aware of the Inquiry date and venue, having been informed of this by the Council on 27 April 2017. WMP did not make contact with the Council's case officer to discuss the specific matter of a section 106 contribution. Neither was any contact made with the appellant in the same regard.
10. However, a letter from the West Mercia Police and Crime Commissioner dated 9 May 2017 was sent to the Council's Managing Director setting out WMP's position with regard to their request for a financial contribution. Notably, the letter also informed the Council that WMP would seek to put its case to the Inquiry in the event of continued opposition to their request. The Council made very clear its opposition to WMP's request in its response to the Police and Crime Commissioner dated 24 May 2017.
11. There then followed an email from the Police and Crime Commissioner's office in response which stated that although it would not be possible to meet with the Council before the Inquiry, WMP would seek to concentrate on the long term relationship between the two organisations rather than the immediate issue (i.e. the appeal). From this, I am inclined to agree with the Council that it could easily be construed that WMP would not be attending the Inquiry.

Moreover, WMP failed to contact the Council's case officer and to my mind, should not have relied on high-level correspondence being disseminated to the Council's Development Management team.

12. Sitting behind all of this, the appellant had made clear that should the Council consider the requested financial contribution to be in compliance with the relevant tests, then this would be included as an obligation in the UU. It is plainly evident that the Council did not consider this to be the case.
13. The Procedural Guide Planning appeals - England (the Guide) states that statutory parties and interested people can rely on representations they made to the local planning authority at the application stage, as these will be forwarded to the Inspector who will take them into account¹. I am satisfied that WMP made their request clear at application stage. However, the Guide goes on to say that, if, having considered the appellant's full statement of case, a statutory party or an interested person wishes to make representations or further representations they should do so within the prescribed timescale i.e. within 5 weeks of the start date².
14. The appellant's statement of case, made reference to the obligations envisaged as part of the drawing up of a UU. Whilst this included a financial contribution to neighbourhood policing, the qualification was made that this would be subject to being required by the Council.
15. Given their evident disagreement with the Council, it seems odd to me that WMP would not then have sought to make explicitly clear their views to both main parties and confirmed their attendance at the Inquiry. Furthermore, in my view, it was incumbent upon WMP to have contacted the appellant regardless of not being party to the UU and also to have made direct contact with the Council's case officer. Had they done so, I am satisfied the appellant would have been fully aware of the need to address the matter of WMP's contribution request in advance of the Inquiry.
16. Given the evident unresolved arguments between the Council and WMP, and that there had been no direct communication with the appellant from WMP since August 2016, I consider it reasonable for the appellant to have formed the view that WMP would not be making representations to the Inquiry.
17. I accept that the Council were aware of WMP's request based on the submissions at application stage and that this could have formed the basis for its inclusion in the UU. However, a considerable period of time passed between then and the start of the Inquiry during which, the Council had made clear that it contested WMP's request. It would be somewhat perverse in my view, for the Council to suggest the inclusion of an obligation it did not consider met the relevant tests.
18. On balance, I consider that WMP did not engage proactively with the relevant officers of the Council or with the appellant leading up to the Inquiry with the result that their attendance was to the evident surprise of both main parties.
19. For the above reasons and having taken all relevant matters into account, I consider that WMP displayed a lack of co-operation and thereby behaved

¹ Annexe F paragraph F.7.1

² Annexe F paragraph F.7.2

unreasonably, causing the appellant to incur unnecessary expense in the appeal process.

Costs Order

20. 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 Mercia Police shall pay to Seabridge Developments Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of the Unilateral Undertaking dated 12 July 2017 and responses to West Mercia Police's request for financial contributions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to West Mercia Police to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hayden Baugh-Jones

Inspector