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# **Costs Report to the Secretary of State for Communities and Local Government**

**by Clive Hughes BA(Hons) MA DMS MRTPI**

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

**Date: 11 January 2017**

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**TOWN AND COUNTRY PLANNING ACT**

**SUFFOLK COASTAL DISTRICT COUNCIL**

**APPEAL BY**

**CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD**

**APPLICATION FOR COSTS BY**

**SUFFOLK COUNTY COUNCIL**

**AGAINST**

**CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD**

Inquiry opened on 25 September 2016

Land at Candlet Road, Felixstowe, Suffolk IP11 9RD

File Ref: APP/J3530/W/15/3138710

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**Land at Candlet Road, Felixstowe, Suffolk IP11 9RD**

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Suffolk County Council for a partial award of costs against Christchurch Land & Estates (Felixstowe) Ltd.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure.
- The inquiry sat for 4 days on 27 to 30 September 2016.

**Summary of Recommendation: That the application be refused.**

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**The Submissions for Suffolk County Council (SCC)**

1. The application was made in writing (Document ID31). There are two strands to the application; unreasonable behaviour and causation. The appellant unreservedly conceded, at a very late stage in the proceedings, to the Council's requirements. The appellant withdrew the evidence that had been put forward against SCC. This particularly related to pre-school and primary school places and two transportation matters. Had the appellant not pursued its original position SCC's case at the Inquiry would have been fundamentally abbreviated. As a direct consequence of the appellant's unreasonable stance SCC incurred unnecessary/ wasted expense on education and transport matters and so a partial award of costs is sought.
2. SCC added to its written application by stating that the appellant, at the eleventh hour, withdrew its case against SCC; in substance this was a full concession. The appellant does not say it would not have signed the Statements of Common Ground (SoCGs) in the light of a potential costs liability. That is a separate matter. The issue is whether the applicant entered a timely agreement as sought in the Planning Practice Guidance (PPG). The case put forward by SCC was conceded by the appellant. The costs consequences do not discourage discussion; they encourage a prompt and timely approach.

**The Response by Christchurch Land & Estates (Felixstowe) Ltd**

3. The appellant's behaviour was manifestly reasonable because it followed policy guidance. In the modern planning system all parties should at all times seek to engage with one another to narrow issues and to make the most efficient use of Inquiry time. The appellant has followed this approach very successfully. This is to be contrasted with a party at an Inquiry dogmatically insisting on a single position and refusing to entertain any discussion or engagement with the other side(s). This is a conspicuously reasonable approach and the appellant should not be punished by an adverse costs award. This would discourage discussion.
4. At the start of the Inquiry the parties considered that an adjournment would be necessary as there were 12 professional witnesses and only 4 days set aside. The position was contracted such as the Inquiry finished in the time set. So even if the conduct of the appellant was considered unreasonable, the outcome has been to save time.
5. The application therefore fails on both points. There has been no unreasonable behaviour and time has been saved. It is outrageous that SCC could embark on

negotiations while keeping the application for costs hidden and only producing it when the negotiations were successful. The application has no merit.

## Conclusions

6. The PPG 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. In particular, the 6<sup>th</sup> bullet point of PPG paragraph 16-052-21040306 says that appellants are required to behave reasonably in relation to procedural matters and that, as an example of unreasonable behaviour, it cites not completing a timely SoCG.
7. The relevant parties produced a SoCG in respect of Highway and Transport matters (Document GEN3) in advance of the opening of the Inquiry. It is dated 13 September 2016. This document identified agreement in respect of all save two matters, namely the public rights of way contribution and the travel plan implementation bond. A subsequent Addendum SoCG on Transport Matters (Document ID24; dated 29 September 2016) was submitted by the parties at the start of the third day of the Inquiry which concluded that there were no outstanding areas of dispute between SCC and the appellant on this matter.
8. Concerning Education and Early Years matters a SoCG on this issue was also submitted at the start of the third day of the Inquiry (Document ID25). This concluded that subject to various contributions and either (a) the reservation and transfer of suitable land within the site; or (b) a further financial contribution towards the purchase land elsewhere, there were no outstanding areas of dispute between the parties on this matter.
9. It is also relevant to note that further SoCGs in respect of Drainage Matters (Document ID15) and Archaeology (Document ID16) were submitted at the start of the second day of the Inquiry. This demonstrates that there were discussions going on in the background, outside the Inquiry room, in an attempt to reduce the differences between the parties.
10. Concerning transport matters, the fact that the first SoCG was dated 13 September 2016 shows that it was completed after the date for the submission of proofs. The addendum SoCG was signed by the parties on 29 September 2016 which was during the Inquiry and confirmed the resolution of the two outstanding issues between the parties.
11. Concerning education matters there was a further complication in that the District Council, which was not party to the discussions, raised issues concerning the legality of the outcome of the negotiations. These are set out in the District Council's position statement on the matter in Document ID30. These concerns were initially raised by the District Council in advance of the opening of the Inquiry and it is reasonable to conclude that they may have had an influence on the appellant's ability to negotiate a speedy SoCG.
12. In my experience it is completely normal for parties to continue negotiations on transport and education matters, and on the contents of any planning Obligation or Undertaking, during an Inquiry. The fact that in this case the appellant conceded to the requirements of SCC does not mean that the appellant was unreasonable to have taken a contrary stance prior to the Inquiry. It may be, for example, that the concession was based on information that had not previously

been available. Without detailed knowledge of the precise negotiations that took place it would not be sensible for me to conclude that the appellant had agreed to what SCC was seeking in an unreasonable manner. There may have been a variety of reasons as to why agreement was reached. I consider that to penalise the appellant for coming to a particular conclusion would be wholly unfair and contrary to the spirit of sensible negotiations and discussions between the parties during an Inquiry.

13. The parties agree that negotiations took place in respect of a number of matters. These negotiations clearly commenced prior to the opening of the Inquiry as evidenced by Document GEN3. There is no evidence before me to demonstrate that SCC would not have needed to attend the Inquiry or produce proofs of evidence had the SoCGs been produced more speedily. Similarly there is no evidence to demonstrate that it was entirely due to the appellant's unreasonable behaviour that the SoCGs were not signed earlier. The fact that the appellant conceded to SCC does not show that its position was in any way unreasonable. With regard to the timing of the Inquiry itself, the various agreements between the parties that were signed during the course of the Inquiry, meant that the original timetable was adhered to albeit with the site visit carried over to the following week.
14. I am not convinced that it has been shown that there was any unreasonable behaviour by the appellant or that the appellant's behaviour resulted in any unnecessary or wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified. I therefore **recommend** that the application be refused.

*Clive Hughes*

Inspector