



Costs Decision

Hearing Held on 18 September 2019

Site visit made on 18 September 2019

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Costs application in relation to Appeal Ref: APP/C1760/Q/18/3216236 Land at Picket Piece, Ox Drove, Picket Piece, Hampshire

- 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 Test Valley Borough Council for a full award of costs against Wates Development Limited and David Wilson Homes Southern (the defendants).
 - The Hearing was in connection with an appeal against the refusal to have the planning obligation accompanying permission 10/00242/OUTN modified by deleting paragraphs 48, 49 & 50 in Schedule 1 Part 2 concerning the reserving of land for a Junior Sports Pitch.
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Decision

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

The submissions for the Council

2. Permission 10/00242/OUTN was granted following an appeal in 2011. In the Statement of Common Ground that was prepared in connection with that appeal, it was agreed that the Junior Sports Pitch was for the 530 houses that became the subject of permission 10/00242/OUTN (the development), and there was no formal agreement that it was to serve some later phase. Moreover, by levelling and seeding the pitch, and subsequently working with the Council to transfer the land, David Wilson Homes has shown it was accepting this agreed position. In now contending otherwise the defendants have introduced irrefutable inconsistencies into their case, and indeed had Wates Development Limited not intervened the land would have been transferred by now.
3. Whilst there is no mechanism within the obligation for the transfer, that is not necessary as the defendants only needed to hand the land to the Council. Moreover, the land clearly serves a useful purpose as it is required by the development and other schemes in Picket Piece, and so withholding the land is unreasonable.
4. Accordingly, the defendants' case was unreasonable and did not have a reasonable chance of success. As these unreasonable actions have led to unnecessary expense a full award of costs is sought.

The response by Wates Development Limited and David Wilson Homes

5. The Statement of Common Ground did not say that the Junior Sports Pitch is required for the development, but rather just described the proposal as including sports pitches, and it acknowledged the Junior Sports Pitch needed to be reserved. Indeed, in its statement concerning this appeal the Council confirmed that the obligation reserved the pitch for a future need that was likely to extend beyond 5 years from its signing.
6. There was no mechanism in the obligation for the land to be handed over and the Council has not made a call for this land when considering other developments in the area. Although negotiations broke down with the intervention of Wates Development Limited, that was not inappropriate but entirely contractual and the Company's legal status in relation to the site was apparent in any land searches.
7. In considering this scheme the test is whether the obligation, rather than the land or the use, serves a useful purpose. Given the lack of transfer mechanisms and the Council not making a call for the land, it is contended the obligation does not. In that sense it is comparable to the Council's release of the school site on the development when it was found to be no longer necessary. Similarly, the likely success of other uses for the site is not a matter before this appeal.
8. Therefore, there has been no unreasonable behaviour and the application for costs should be dismissed.

Reasons

9. The *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.
10. I share the defendants' position that in considering this appeal the issue is whether the obligation, rather than the land, continues to serve a useful purpose. With this costs application, the Council's case places great weight on the Statement of Common Ground that was signed for the 2011 appeal. However, even if an applicant has agreed to an element being in the obligation, or even if a facility is within a proposal subject of an obligation, it does not necessarily mean its inclusion in that obligation would be correct and in line with planning legislation and guidance. Consequently, I see no reason why the references to the Statement of Common Ground should be deemed to show decisively that this pitch was required for the development, or that safeguarding it continues to serve a useful purpose.
11. Rather the Officer Report made clear the Junior Sports Pitch was for a subsequent phase while the Council has confirmed that the development included an oversupply of recreational land broadly comparable to the size of the pitch. Moreover, had the Junior Sports Pitch been required or needed for permission 10/00242/OUTN, or to serve other developments in Picket Piece, it is fair to assume there would be triggers within the obligation to secure its provision. In these circumstances, I consider it was entirely reasonable for the defendants to contend that the obligation served no useful purpose.
12. I accept that, even without any requirements in the obligation, it is open for the defendants to transfer the pitch to the Council for public usage. However,

that is not a matter that was instigated or secured by the obligation and so is not a purpose the obligation serves, but it would exist whether or not the obligation was present. Moreover, while that would have taken place had Wates Development Limited not intervened, I understand that company was entirely within its contractual rights to take such an approach. I therefore see no grounds for finding that results in the defendants' actions being unreasonable.

Conclusions

13. Accordingly, I conclude that unreasonable actions leading to unnecessary expense have not been demonstrated, and so the costs application is refused.

J P Sargent

INSPECTOR