



## Costs Decisions

Hearing Held on 29 October 2019

Site visits made on 29 October 2019

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> November 2019**

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### **Costs applications in relation to Appeal Ref: APP/C1570/W/19/3227368 Land off Radwinter Road, Saffron Walden**

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - An application is made by Mr William Main (Manor Oak Homes) for a full award of costs against Uttlesford District Council (Application A).
  - An application is made by Uttlesford District Council for a full award of costs against Mr William Main (Manor Oak Homes) (Application B).
  - The hearing was in connection with an appeal against the refusal of planning permission for Extra Care Housing (Use Class C2) together with associated infrastructure including road, drainage and access.
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### **Costs applications in relation to Appeal Ref: APP/C1570/W/19/3227369 Land to east of Shire Hill, Saffron Walden**

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - An application is made by Mr William Main (Manor Oak Homes) for a full award of costs against Uttlesford District Council (Application C).
  - An application is made by Uttlesford District Council for a full award of costs against Mr William Main (Manor Oak Homes) (Application D).
  - The hearing was in connection with an appeal against the refusal of planning permission for Business Use (Use Class B1) together with associated infrastructure including roads, drainage, access details from Shire Hill.
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## **Decisions**

1. Application A for an award of costs is allowed in the terms set out below.
2. Application B for an award of costs is refused.
3. Application C for an award of costs is allowed in the terms set out below.
4. Application D for an award of costs is refused.

## **Reasons**

5. The costs applications concern linked appeals on separate but nearby sites, which are associated as a result of their planning history. Both proposals share the same appellant, and were determined by the Council at the same time with a similar reason for refusal. The appeals were heard at the same Hearing. I have considered each costs application on its individual merits. However, to avoid duplication I have dealt with them together.

6. 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
7. A written application for costs was made by Mr William Main (Manor Oak Homes) against Uttlesford District Council in respect of each appeal. Mr Main submits that he advised council officers that the transfer of S106 obligations relating to UTT/13/3467/OP to the appeal schemes was contrary to Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended), as the proposed obligations were not necessary to make the developments acceptable in planning terms, directly related to the developments; and fairly and reasonably related in scale and kind to the developments (the 3 CIL tests).
8. Notwithstanding the above, the Council's statement of case in the appeals confirms that it determined the proposals on the basis that all of the terms of the UTT/13/3467/OP s106 agreement should be transferred to the appeal schemes.
9. The Council's decision to refuse the appeal schemes on that basis was unjustifiable and unreasonable, since the appeal proposals do not relate to the entirety of the site or all elements approved under UTT/13/3467/OP upon which the associated s106 agreement was based.
10. Accordingly, there are obligations within the s106 agreement that only meet the 3 CIL tests because of the residential element of UTT/13/3467/OP and which fail those tests in relation to the B1 Business and C2 extra care elements of the appeal proposals. Therefore, such obligations should not have been required of the appeal schemes. In particular, the Council's refusal of the B1 Business and C2 extra care appeal proposals on the basis that they did not provide for affordable housing (which was being built on the residential site under UTT/13/3467/OP) was especially unjustifiable and clearly did not meet the 3 CIL tests.
11. Further, in several cases the provision required by the Council of the appellant in respect to the appeal schemes has already been provided by Linden Homes, or is set to be provided when a corresponding trigger is met as laid out in the original s106 agreement. To require the corresponding provision to also be provided by the appeal schemes was therefore duplication, non-complaint with the 3 CIL tests and unjustifiable.
12. In its response to Mr Main's costs applications, the Council said "*There is great concern about the delivery of the S106 package as the appellant has gone out of their way to 'dump' all the obligations upon the House builder of which have strained relationship because of the appellants' behaviour*".
13. However, it was clear from the s106 agreement that the House-builder (Linden Homes) had responsibility for defined obligations and it was not a matter of the appellant having 'dumped' obligations upon them, nor should the appellant have been required to assume responsibility for the delivery of such obligations. The respective obligations are set out in the text of the s106 agreement, which states at paragraph 4.1.1 to 4.1.2:

*4.1.1 The Employment Land shall be subject to the obligations and restrictions contained in this agreement only in respect of the Employment*

*Contribution (as defined in Schedule 5) and the setting up and monitoring of the Workplace Travel Plan; and*

*4.1.2 The Residential Land shall be subject to all the obligations and restrictions contained in this agreement save the Employment Contribution and the setting up and monitoring of the Workplace Travel Plan as stated in 4.1.1 above.*

14. Further, Section 106 (3) of the Town and Country Planning Act 1990 provides that a planning obligation is enforceable by the Council against a) the person entering into the obligation and b) any person deriving title from that person. In other words, the planning obligation 'runs' with the land. Upon sale of the whole or part of the land the obligation will automatically be binding on successors in title of the original parties to it. Accordingly, Linden Homes is responsible for meeting requirements of the original s106 agreement as the sole successor of the residential land benefitting from UTT/13/3467/OP and the Council can, if necessary, enforce those requirements. It is not necessary, or in compliance with the 3 CIL tests, for the appeal schemes to provide the same obligations in respect to matters which relate only to the residential element of UTT/13/3467/OP situated on separate land to the appeal sites.
15. At the Hearing a verbal application for costs was made by Uttlesford District Council against Mr William Main (Manor Oak Homes) in respect of each appeal. It was submitted that the Council had made many attempts to renegotiate the s106 agreement pertaining to UTT/13/3467/OP with Linden Homes. It was also argued that the submission of evidence from Linden homes on the day of the hearing was unreasonable behaviour.
16. However, the Council's attempted negotiations with Linden Homes in relation to its responsibilities under the s106 agreement pertaining to UTT/13/3467/OP were not a matter for the appellant in respect to the distinct appeal proposals submitted, which should have been determined on their planning merits and in compliance with the 3 CIL tests. The appellant did not act unreasonably in this regard, and in my view helpfully assisted the Council by facilitating correspondence from Linden Homes which clarified its position in respect to the s106 agreement and payments. It was not unreasonable for this to be received late in the appeal process, especially as the correspondence was a response to comments made in the Council's statement (as in paragraph 12 above) that the appellant and Linden Homes sought to address. In any respect, the Council was given a full opportunity during an adjournment of the Hearing to respond to the correspondence and was not prejudiced, nor was there wasted expense.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in relation to applications A and C.
18. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in relation to applications B and D.

### **Costs Order**

19. 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 Uttlesford District Council shall pay to Mr William Main (Manor Oak Homes), the costs of the appeal proceedings in respect to Appeal Refs APP/C1570/W/19/3227368 and APP/C1570/W/19/3227369; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. Mr William Main (Manor Oak Homes) is now invited to submit to Uttlesford District 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.

*Andrew Walker*

INSPECTOR