
Costs Decision

Site visit made on 26 June 2020

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 6 July 2020

Costs application in relation to Appeal Ref: APP/Y0435/W/20/3246822 Land north of Wavendon Business Park, Ortensia Drive, Milton Keynes

- 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 Abbey Developments Ltd for a full award of costs against Milton Keynes Council.
 - The appeal was against the grant subject to conditions of planning permission for reserved matters following 15/02337/OUT for internal access, appearance, landscaping, layout, and scale for Phase One (west side) comprising 79 residential units.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. This application is one of the most straightforward I have seen. Essentially it is alleged that the Council sought, unreasonably, to impose an unnecessary condition on a reserved matters application. The condition is said to be an attempt to revisit the principle of development which had been granted in outline, and is in any event not necessary in the context of this proposed development.
4. As will be seen from my decision on the appeal, those are propositions with which I agree. The Council did not follow the advice of the National Planning Policy Framework and imposed a condition which was wholly unreasonable and unnecessary (quite apart from any other flaws the condition might subsequently be deemed to have exhibited).
5. The Council has a legitimate aim in seeking to protect community facilities in accordance with the development plan and NPPF, and that aim was addressed during the consideration of the outline application. It would have been possible at that stage to seek the type of protection now proposed. That would have been the correct time to do so.
6. I realise that there have been competing legal opinions relating to the imposition of the condition, but the most persuasive legal opinions clearly indicate to me that the condition should not have been imposed at the stage it

was. It is not unreasonable per se to follow either one of the legal opinions if it can be justified.

7. Quite part from that point, however, I am satisfied that the condition is not necessary or reasonable given the spatial relationship between the proposed dwellings and The Stables. Nothing provided by the Council justifies the suggestion that nuisance might occur at these dwellings such that the operation of The Stables would be put at risk. The Council's rebuttal of the costs application fails to provide any respectable basis for its approach or justify the disputed condition. It left the Appellant with no option but to pursue an appeal and incur the unnecessary costs of doing so.
8. A full award of costs is justified.

Costs Order

9. 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 Milton Keynes Council shall pay to Abbey Developments Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Milton Keynes 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.

Philip Major

INSPECTOR