
Costs Decision

Site visit made on 6 July 2020

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

**Costs application in relation to Appeal Ref: APP/Y1138/W/19/3238707
Land west of Siskin Chase, Colebrooke Lane, Cullompton, Devon, EX15 1UD.**

- 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 Taylor Wimpey UK Ltd for a full award of costs against Mid Devon District Council (the LPA).
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the development of up to 105 dwellings, associated landscaping, public open space and allotments together with vehicle and pedestrian access from Siskin Chase and pedestrian access from Colebrooke Lane.
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Decision

1. The application is granted and a partial award of costs is made in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities may be at risk of an award of costs where they fail to produce evidence to substantiate a reason for refusal or provide vague or generalised assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The LPA's 'reason for refusal' identified concerns over the proposed access arrangements from Siskin Chase. However, this was at odds with its development plan policy and emerging local plan policy for bringing forward this housing allocation. Two points of access from Siskin Chase were specified within the LPA's planning policies.
5. If vehicular access onto another highway was deemed necessary it is reasonable to expect this to be included as part of the locally adopted and emerging policies for developing the appeal site and to be supported by objective highways evidence. However, the LPA's relevant policies were 'silent' on this and no objective or other cogent evidence was submitted to support the LPA's argument for alternative access arrangements.
6. In responding to the application, the Highway Authority (HA) advised that it was unconcerned over the proposed access arrangements from Siskin Chase. The LPA's planning officers, having considered the applicant's detailed

Transport Assessment, as well as the advice of the HA and the concerns of some local residents, recommended that permission should be granted.

7. Whilst the LPA is not bound to accept the advice of the HA or the recommendations of its officers, in taking a contrary stance, it failed to submit any technical evidence or objective analysis to substantiate its concerns. The LPA's actions regarding an alternative access arrangement amounted to unreasonable behaviour which caused the appellant to incur unnecessary expense in responding to the LPA's highway concerns. The appellant should therefore be entitled to recover the costs directly related to the LPA's 'reason for refusal' and addressed as the first main issue within the appeal decision.
8. An integral part of the appeal involved the issue of planning obligations in the unilateral undertakings (UUs) that had been submitted under the provisions of section 106 of the Town and Country Planning Act 1990 (the second main issue). In addressing this issue I found, amongst other things, that some of the planning obligations within the UUs were necessary to make the development acceptable. Irrespective therefore of the LPA's failure to determine the application within the prescribed period and its 'reason for refusal', it would have been necessary for the applicant to incur the costs associated with the inclusion of those necessary obligations as part of a UU.
9. Much evidence was submitted in respect of the second main issue and it was the appellant's decision to submit two separate UUs. Counterpart obligations and 'blue pencil clauses' are widely used in planning appeals. However, separate UUs were not sought by the LPA and the applicant was, in effect, 'hedging its bets'. Given my findings on the second main issue, it would be inappropriate for this award of costs to include those incurred by the applicant in the preparation and submission of the UUs and the associated evidence.
10. Given the above, I conclude that a partial award of costs would be justified.

Costs Order

11. 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 Mid Devon District Council shall pay to Taylor Wimpey UK Ltd the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in respect of the first main issue identified within the appeal decision (impact on the free flow of traffic and potential parking conflict) and excludes those costs incurred in the preparation and submission of evidence in respect of the second main issue (the unilateral undertakings submitted under section 106 of the Town and Country Planning Act 1990).
12. The applicant is now invited to submit to Mid Devon 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Neil Pope

Inspector