

Costs Decisions

Site visit made on 14 July 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Costs application in relation to Appeal A Ref: APP/K1128/W/21/3272629
Land rear of Green Park Way, Green Park Way, Chillington TQ7 2HY

- 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 Acorn Planning Group for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of reserved matters approval for development of 62 dwellings, landscaping and associated works.
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Costs application in relation to Appeal B Ref: APP/K1128/W/20/3247657
Land rear of Green Park Way, Green Park Way, Chillington TQ7 2HY

- 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 Acorn Planning Group for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of reserved matters for the development of 63 no. dwellings (including market, affordable and retirement housing), landscaping and associated works following grant of outline consent 0771/16/OPA.
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Decision

1. The applications for costs are refused.

Preliminary Matters

2. As the applications for costs and the rebuttals from the Council are largely similar for both Appeals A and B, I have dealt with both in the same decision.

Reasons

3. 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.
4. The applications are seeking to recover the full costs incurred in the appeals. The applicant considers that the Council behaved unreasonably because the schemes were supported by the Lead Local Flood Authority (LLFA) officer but the members of the Development Management Committee made a recommendation to refuse, contrary to the advice of the LLFA and that of the professional planning officer. It is suggested that the extent to which the members were influenced by third parties has undermined the professionalism of officers and resulted in wasted expense.
5. I am aware that the site was allocated for housing in the local plan and that the allocation required a sustainable urban drainage system to be provided. I also note the outline planning permission that relates to the site, the conditions

attached thereto and the related S106 planning obligation. The outline planning permission includes condition 19 which relates specifically to drainage.

6. The applicant asserts that the matter of the drainage infrastructure is entirely divisible from the reserved matters, which were scale, layout, appearance and landscaping. In my view, whilst there is an ability to separate some aspects, the surface water drainage scheme cannot be entirely compartmentalised from the layout of the scheme. This is recognised in the Flood Risk Assessment submitted with the outline application which states in Paragraph 3.19 that: *"The surface water drainage proposal devised for the development will seek opportunities to reduce the overall level of flood risk in the area and beyond in line with PPG. The development proposal will achieve the objective through suitable layout and design, with the wider inclusion of green infrastructure and the appropriate use of sustainable drainage measures"*.
7. Whilst much of the infrastructure for the surface water drainage scheme will be beneath the site and condition 19 of the permission is a catchall to ensure that the scheme is robustly detailed and secured prior to occupation of the dwellings, this aspect cannot be an afterthought once the layout and landscaping of the scheme has been fixed, particularly as the swale and bund feature within the layout and landscaping details.
8. Council Members were entitled not to accept the professional advice of officers so long as a case could be made to the contrary. In this case, the Members exercised their planning judgement based on local knowledge and representations from interested parties, including one suitably qualified in drainage matters. The Council concluded that the proposed development would be in conflict with development plan Policy DEV35. The Minutes from the committee meeting record the nature of the discussion on this particular topic, the contributors to the discussion and the reason for refusal. The concerns raised are reflected in the reason for refusal. The weight which the Members attributed to the third party contributions having regard to their own local knowledge of the area and flood events was a matter for their judgement. Given the length of discussions on the topic, the extensive material provided and scrutinised, the Council's decision did not amount to generalised assertions unsupported by analysis.
9. The evidence the Council presented to support the appeal was sufficient to substantiate their decision, notwithstanding that this was contrary to the advice provided to the Members.
10. Whilst the applicant contends that the refusal of permission disguises an in-principle objection by the Committee to a scheme for which the principle has been secured by the grant of outline permission, I do not share the same view. The issue of flooding is obviously a key concern of local residents who live in a village that regularly has complications owing to the presence of the watercourse, drainage infrastructure constraints and rising land on either side. Given the increasingly unpredictable weather patterns with climate change, the need for a robust drainage system to be integrated within a well-considered layout is key; a point emphasised by the latest version of the National Planning Policy Framework (2021). Whilst the scheme is not an exemplar in this regard, I view it is acceptable to meet the necessary development plan policy.

11. Overall, although I have concluded differently from the Council in relation to the proposal, I consider the Council put forward a case which was sufficient to justify its position with regard to the reason for refusal.
12. For the reasons above, I find that the Council's determination of the proposal and conduct during the appeal process does not amount to unreasonable behaviour. I have given consideration to whether a partial award of costs would be justified but, for the reasons given above, find that it would not.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and neither a full, nor partial award of costs is justified.

Hollie Nicholls

INSPECTOR