
Costs Decisions

Hearing Held on 14 June 2022

Site visit made on 14 June 2022

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 25 July 2022

Costs application in relation to Appeal A: APP/Y3940/W/19/3229836 Plot 5, The Poplars Residential Park, Poplar Tree Lane, Southwick, BA14 9NB

- 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 Mr Patrick McDonagh for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission.
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Costs application in relation to Appeal B: APP/Y3940/W/19/3229843 Plot 6, The Poplars Residential Park, Poplar Tree Lane, Southwick, BA14 9NB

- 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 Mr Patrick McDonagh for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission.
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Costs application in relation to Appeal C: APP/Y3940/W/19/3229845 Plots 1-3, The Poplars Residential Park, Poplar Tree Lane, Southwick, BA14 9NB

- 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 Ms Bridget McDonagh for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission.
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Decisions

1. The applications for costs in relation to Appeals A and B are allowed, partially.
2. The application for costs in relation to Appeal C is refused.

The submissions for the appellants

3. The applications are for full awards of costs associated with all 3 appeals. The 3 appeals are all in accordance with the development plan and should have

been granted planning permission. The Council has sought to prevent and has delayed development that should have clearly been permitted.

4. In relation to the visibility splay, the Council has failed to substantiate its reasons for refusal. They have powers available to them to seek the maintenance of a visibility splay by requiring the cutting back of vegetation which overhangs the highway; they have not used those powers and has sought to rely on the resultant, alleged shortcomings to resist development. In relation to pedestrian safety, it is clear that previous Inspectors did not uphold this reason and the Council has merely relied on personal opinion. There has been no objective analysis of the pedestrian safety issue.
5. The drainage issue could clearly have been dealt with by the use of conditions. Previous Inspectors had imposed such a condition. However, the Council refused the proposals for Appeals A and B for that reason. It is acknowledged that the Council did review its case and has not sought to pursue the reason, accepting that conditions could satisfy their concerns. However, work had already been undertaken to address those reasons, even though it has not been necessary to deal with them at the Hearing. In relation to pedestrian access, the Council has failed to consider the imposition of conditions requiring pedestrian access from the far north-east of the site which would emerge onto the highway opposite the footway on Frome Road. This could have overcome their objections.
6. The Council has persisted in raising issues which have previously been found acceptable by Inspectors. The permission relating to occupation by the Cash family (Ref APP/Y3940/W/15/3006435) did not contain a specific limitation on the likely numbers of people and vehicles on the site. The Council has been aware that the Cash family have left the site and have not sought to address this. Having received the aforementioned appeal decision, which found the proposal acceptable having considered matters relating to highways, the Council has sought to re-open these matters.

The response by the Council

7. The Council's cases have arisen from a use of full planning judgement of the issues as they stand at present. In relation to highways issues, the NPPF has been specifically altered to reduce the severity of the test required in the judgement of such matters. Additionally, the current proposals would give rise to more people on the sites and the scope for shared journeys, as envisaged by one Inspector, may not exist. There would be a material increase in vehicle movements which would have an impact on highway safety. With regard to pedestrian safety, walking on the unmade verge adjacent to numerous and fast-moving vehicles is unsafe.
8. In relation to the previous appeal decision Ref APP/Y3940/W/15/3006435, the Inspector identified an issue relating to highway safety and stated that this was the reason for imposing the personal restriction.
9. With regard to drainage, the situation is unfortunate but the Council changed its view in a timely manner, acting quickly in response to the appellants' case.

Reasons

10. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own expenses in appeals and that costs may only be

awarded against a party who has acted unreasonably and thereby caused the party who is applying for costs to incur unnecessary or wasted expense in the appeal process.

11. The previous appeals involved a smaller amount of development than would arise from these appeals and were determined in the context of the NPPF requiring that the rejection of proposals on highways grounds should demonstrate a severe effect. In addition, when imposing the personal condition which relates to the current Appeal C, the Inspector considered that the fact that one large family group would be occupying the site, would be likely to result in shared trips and thus a reduced number of vehicle movements. The current proposals would give rise to a total of 5 pitches which could potentially be occupied by unrelated families (although I acknowledge that this is not presently the case) within the context of the NPPF no longer requiring demonstration of a 'severe' effect to resist a proposal. These factors in themselves justify a fresh consideration of the effects of the proposals on highway safety and I consider that the Council has not been unreasonable in seeking to do so.
12. In relation to the actual effects of the likely additional numbers of vehicle movements, whilst I have firmly taken the view of the appellants, I consider that the Council has exercised its planning judgement in seeking to determine the likely effects on highway safety. Whilst measures are available to the Council to seek to improve visibility, it seems to have taken the view that normal verge maintenance results in times of the year when visibility is reduced. I can understand why that may be the case, but I have concluded that a specific solution to a perceived problem exists and so the proposals should not be prevented in this case. I find that the Council's views are not unreasonable ones, even though I disagree with them.
13. In relation to pedestrian safety, Inspector Freeman commented that, for a smaller development of up to 3 caravans, the situation was not ideal and that there would be a risk, although concluded that it would not be harmful. The Council have considered a larger overall amount of development which would be likely to give rise to greater numbers of pedestrian movements and concluded that it would be harmful. Again, whilst I have disagreed with their conclusion, I find that their view is not unreasonably held. In relation to the possibility of the use of a condition to require pedestrian access from the north-east of the site so that it would connect with the pavement on the opposite side of the road, the Council appear not to have considered this possibility. Whilst it is possible that it may have overcome their objection, I am not surprised that they did not consider it. It was not suggested until later in the appeal process and given that it would have to run through one of the pitches, it would mean that access to the other 4 pitches occupants who may potentially be unrelated to the occupiers of plot 5 would have to go through plot 5; or it would lead to a reduction in the size of pitch 5. In my view it would not represent an obvious practical solution, even though the appellants did confirm at the Hearing that it would be acceptable to them, if deemed necessary.
14. With regard to drainage, this was dealt with previously at appeal by means of conditions. There appears to be no reasonable ground for departing from that procedure and introducing a reason for refusal; a conclusion which the Council ultimately came to during the appeal process. However, the appellant has been involved in necessary work and expense in addressing this issue in the

submission of Appeals A and B. Notwithstanding the fact that the appellant has acknowledged that this has only taken a small part of the expenditure for these appeals, it is expense that should not have been necessary and has been wasted.

15. In relation to the issue of drainage relating to Appeals A and B, 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 partial award of costs is justified.
16. In relation to the application made for Appeal C, I find no unreasonable behaviour and the conditions necessary for an award of costs are not met.

Costs Order

17. 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 Wiltshire Council shall pay to Mr Patrick McDonagh, the costs of the appeal proceedings described in the heading of this decision relating to Appeals A and B in relation to the issue of drainage only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. Mr Patrick McDonagh is now invited to submit to Wiltshire 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.

T Wood

INSPECTOR