



Costs Decision

Inquiry Held on 7 and 8 November 2023

Site visit made on 6 November 2023

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Costs application in relation to Appeal Ref: APP/P0240/Q/23/3320249 Chamberlains Barn Quarry, Heath Road, Leighton Buzzard, LU 73PZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 106A, 106B, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Arnold White Estates Limited, Redrow Homes Limited, Mulberry Property Developments Ltd, Close Brothers Limited and Bellway Homes Limited for a full award of costs against Central Bedfordshire Council.
 - The inquiry was in connection with an appeal against the refusal of the Council on an application for a planning obligation to be modified as follows: *'To enable the installation, ownership, operation and use of a sustainable ground-source ambient heat network under that part of Chamberlains Barn known as the "Shenley Hill Country Park" (shown indicatively coloured green and labelled "Country Park Phase 1" and "Country Park Phase 2" on Plan F to the S. 106 Agreement which can be found at Tab 1L of the Appeal 6 Bundle) as detailed in the table at Tab 1D of the Appeal Bundle and the tracked changes to the S. 106 Agreement set out at Tab 1E of the Appeal Bundle.'*
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Decision

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

Procedural Matters

2. The application for costs was made concurrently with another application for costs relating to a s78 appeal (ref 3325744) for broadly the same site. That application is the subject of a separate costs decision. My consideration here relates to the s106B appeal, as detailed in the above header.
3. The application was made in writing prior to the Inquiry opening. By agreement with the main parties at the Inquiry, the Local Planning Authority was given until Friday 10 November to provide any written response. The Applicant then had until Monday 13 November to provide any final comments. These timeframes were adhered to by both parties and I have taken these submissions into account in determining this application.

The submissions for Arnold White Estates Limited, Redrow Homes Limited, Mulberry Property Developments Ltd, Close Brothers Limited and Bellway Homes Limited

4. The application was made in writing by the Applicant¹ before the Inquiry opened. I do not seek to replicate them here.

¹ I use the singular term Applicant, albeit the applicants themselves are five separate bodies as listed.

The response by Central Bedfordshire Council

5. The Council set out in their written response on Friday 10 November. Again, I do not seek to replicate them here.

Reasons

6. The national Planning Practice Guidance (the Guidance) sets out how the matter of costs could be dealt with. In particular, it indicates that costs will normally be awarded when two conditions are met: firstly, the party against whom the award is sought has acted unreasonably – and that is in the sense of the ordinary meaning of unreasonable – and; secondly, the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The application to modify the s106 was made in December 2022, at the same time permission was sought for an ambient GSHP under appeal ref 3325744. In October 2023, at my request, the main parties submitted 'position statements' in order to inform the Inquiry of their positions on the principal matters. At that stage, the Council highlighted concerns over s106A(5). This matter was not addressed nor referred to in the Officer Report (undated) at Appendix A1 CB-22-04278-SECM of the Council's Statement of Case.
8. Indeed, on plain reading of that report, it is clear that it failed to grapple with the matter of whether the modification sought would '*serve that purpose equally well*' as set out at s106A(6)(c). This omission is important when considering reasonableness and the probability of an Inquiry being necessary or not. Had the Council at that stage asked itself this question – which by the time of its position statement it was fully aware of – would there have been a different outcome?
9. The Country Park would continue to be delivered whether or not the modification was accepted. The modification does not seek to change that position. There has been disagreement over whether or not the existing s106 (that is the 2015 version with supplemental elements) would permit a GSHP network under the Country Park, and the Council did not want to be burdened by a GSHP infrastructure under this should there be any leaks or if the operator went bust. Nor did the Council wish to be burdened by making good any damage to the Country Park arising from the installation of the GSHP².
10. Such matters have been addressed through the grant of planning permission in respect of planning appeal ref 3325744. The risk of leaks is extremely low, and the proposal would use non-toxic, biodegradable thermal fluids secured by condition. Both long term maintenance and the making good of any installation or repair related damage, is secured by means of a legal agreement. These are all matters which the Council could have reasonably resolved in March/April 2023.
11. In terms of s106A(5), this is an interesting legal point. It only became apparent in the few weeks proceeding the Inquiry. Nonetheless, it does not alter the fact that the modification sought would serve the useful purpose equally well. That is the primary consideration before the decision-maker at the Inquiry. There is nothing in the Officer's Report that indicates that there

² Appendix A1 CB-22-04278-SECM of the Council's Statement of Case, page 12 of 13, paragraph 2.6

still would have been an appeal as a result of this issue, as suggested by the Council.

12. When taken in the round, I find that the Council did act unreasonably in this case. Whilst this is necessitated, in part, on my findings in respect of appeal ref 3325744, it is not possible to disassociate the two proposals from each other. Indeed, both schemes were before the Council at around the same time. Had the Council worked proactively with the Applicant the issues arising could have been addressed without the need for appeals to have taken place. The need to appeal this scheme has resulted in unnecessary and wasted expense having been incurred by the Applicant.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

14. 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 Central Bedfordshire Council shall pay to Arnold White Estates Limited, Redrow Homes Limited, Mulberry Property Developments Ltd, Close Brothers Limited and Bellway Homes Limited, 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.
15. The applicant is now invited to submit to Central Bedfordshire 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.

C Parker

INSPECTOR