



## Costs Decision

Hearing held on 10 September 2024

Site visit made on 10 September 2024

**by A Owen MA BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 October 2024**

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### **Costs application in relation to Appeal Ref: APP/C3810/W/24/3343785 Land West of Drove Lane, Main Road, Yapton, West Sussex BN18 0DX**

- 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 Landlink Estates Ltd for a partial award of costs against Arun District Council.
  - The appeal was against the refusal of planning permission for erection of 20 dwellings (including 6 affordable units) with new access, open space, landscaping, sustainable drainage, biodiversity mitigation and associated works.
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### **Decision**

1. The application for a partial award of costs is refused.

### **The submissions for Landlink Estates Ltd**

2. The costs application was made in writing, but submitted at the hearing and can be summarised as:
  - The Council failed to co-operate with the appellant and failed to agree the statement of common ground (SoCG);
  - The Council have failed to determine cases in a consistent manner with regards to their requests for secondary school transport contributions;
  - The Council prevented development which should clearly be permitted having regard to its accordance with Arun Local Plan policies INF SP1 and INF SP2;
  - The Council required the appellant to enter into a planning obligation which does not accord with relevant national policy;
  - The Council failed to produce evidence to substantiate why a contribution to school transport was necessary taking account of any capacity at the catchment secondary school, the value of the contribution, the period for which the contribution would address and possible alternative options.

### **The response by Arun District Council**

3. The Council's response was made in writing after the hearing. It can be summarised as:
  - The Council did engage with the appellant;
  - The Council have been consistent in their requests for contributions;

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- The Council have justified their approach in using position papers to facilitate development;
  - The Council have explained why the contribution sought would meet national policy regarding the Community Infrastructure Levy;
  - The Council have justified their reason for refusal.

## **Reasons**

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
5. It goes on to state that local planning authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal or if they behave unreasonably with regard to procedural matters at the appeal.
6. A SoCG was agreed which related to the appeal as a whole. It showed that there was disagreement regarding the fourth reason for refusal. A separate SoCG between the appellant and West Sussex County Council regarding this particular reason for refusal was drafted and has been commented on by both parties. It is clear that there was, and remains to be, disagreement on many aspects. As such while an agreed SoCG on this issue may have provided a little more focus, the draft provided clearly shows where disagreements persist. Even if the Council had signed the SoCG, it may not have necessarily resulted in any less effort or expense on the part of the applicant.
7. Furthermore though there were periods where the Council did not respond in a timely manner, given the disagreement between the parties I do not consider it likely that more frequent engagement would have materially resolved any issues. Certainly over recent weeks there has been regular correspondence between the parties with no resolution.
8. Turning to more substantive matters, the appellant provided a table showing planning decisions made since the Council began implementing their current approach to school transport, where contributions were not sought. This including a previous application for the appeal site. However I understand correspondence between the County Council and the District Council was not efficient or effective hence the failure to secure a contribution on that occasion. Indeed this appears to explain some of the other cases referred to too when contributions maybe should have been secured, but were not. Whilst this demonstrates bad practice, I do not consider this shows clear inconsistency in the general approach to securing such contributions.
9. The Council's position paper, dated September 2022, explained that due to growing demand for secondary school places in Arun and the delays to the delivery of a school to meet that demand, the County Council would object to any further development generating secondary school age children. To avoid this significant problem, the County Council proposed that developments provide a contribution to fund the transportation of pupils to other schools outside the District which do have capacity.
10. Policy INF SP1 and INF SP2 relate to the provision of infrastructure, including a new school, and the funding of that through planning obligations. The

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contributions sought would not conflict with these policies. Moreover, the PPG advises that planning obligations can secure contributions for both temporary and permanent needs such as school transport costs. As such it is not unreasonable for the Council to use this method to collect contributions rather than through CIL or general taxation. My view on this is consistent with the Inspector of an appeal last year<sup>1</sup>, who found that a legal agreement to secure a contribution to school transportation was a reasonable solution and that it met the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, i.e. would be necessary to make the development acceptable in planning terms, would be directly related to the development; and would be fairly and reasonably related in scale and kind to the development

11. The position paper sets out the detail of how the contribution would be calculated. It is understood that this has not been subject of viability testing, or formal public consultation. Nonetheless, as set out above, the contributions sought would meet the tests set out in Regulation 122.
12. The appellant suggests that there is sufficient capacity at the catchment school and therefore there would be no need for school transport contributions at all. Evidence provided at the hearing shows that at the start of 2024/25 the local catchment school offered places to 11 pupils, with no older siblings at the school, from outside the catchment area. However, this just relates to one school year. In future years capacity across the school is promptly reached and then exceeded based on anticipated housing development. It is also understood a district-wide approach is necessary otherwise the introduction of additional pupils from the appeal proposal may have a consequential effect on the need for other pupils to require transport.
13. Moreover although some nearby schools have been able to increase capacity, it is understood that as the catchment school is an academy, as are many of the secondary schools locally, and not local authority maintained, the County Council have no power to direct additional pupils are taken.
14. On these substantive matters, I am satisfied that it was not unreasonable for the Council to require the school transport contribution. Consequently whilst I recognise the disagreement regarding the precise value of the amount, and the period for which it is sought, these aspects are part of the parties' detailed cases and so I do not consider the appellant's expense on this was wasted.
15. Overall, it has not been demonstrated that the Council behaved unreasonably resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG. Therefore, the application for an award of costs is refused.

*A Owen*

INSPECTOR

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<sup>1</sup> Appeal Ref APP/C3810/W/23/3323858