



Costs Decision

Site visit made on 9 May 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2024

Costs application in relation to Appeal Ref: APP/Q1153/W/23/3327985 Land off Radford Way, Okehampton, EX20 1UP

- 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 Leander Developments Ltd for a full award of costs against West Devon Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for outline planning permission with some matters reserved (access) for a mix of around 60 1 to 4 bedroom residential dwellings & associated infrastructure.

Decision

1. The application for costs is refused.

Preliminary Matters

2. The corresponding appeal decision was issued on the 15 October 2024.

Reasons

3. 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.
4. The PPG goes on to advise that awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Costs applications may relate to events before the appeal or other proceeding was brought, but cannot extend to compensation for indirect losses, such as those which may result from an alleged delay in obtaining planning permission.
5. Whilst the appellant alleges that the Council has delayed development which should have clearly been permitted, for the reasons set out in my separate appeal decision, I do not find this to be the case or that the appeal was entirely unnecessary.
6. I understand that at the point in time that the appeal for non-determination was submitted, the application had been processing for 29 weeks and, did not at that time, appear close to resolution. However, having not engaged with a pre-application process, the development plan requirements on S106 contributions were available for the appellant to consider and include, or otherwise, within its S106 Heads of Terms (HoTs) as part of the application. That some other contributions would be required will not have come as a surprise to the appellant given the extant scheme and associated S106 obligation. If the appeal proposal was only financially capable of sustaining

what was specifically detailed within the HoTs, then a Financial Viability Appraisal (FVA) could have been submitted with the application. An FVA was not ultimately submitted until 16th May 2023, a long time after the application was validated in January 2023.

7. The Council took a significant period of time to procure and receive the 'Brief Review' of the FVA. In my view, it is not illogical to procure such specialist advice on viability from an external source if no relevant expertise is available 'in-house'. Whilst I am sympathetic to the appellant's frustrations at the time taken and the rigidity of the Council about using a particular specialist, it does not appear that this was down to any deliberate attempt to delay the development. I do not necessarily entertain the idea of a lack of transparency and bias here, and those matters fall outside of the remit of this costs application in any event, but I urge the Council to more quickly respond to viability issues in the future.
8. Comments have been made about the Council's unwillingness to provide a statement of common ground, but they are ordinarily reserved for hearing or inquiry processes. Furthermore, I have seen no evidence that such was drafted by the appellant in an attempt to secure agreement from the Council as part of this appeal.
9. In terms of the planning obligation, a draft S106 was submitted with the appeal but was based on affordable housing terms which were in dispute between the parties as detailed in the main statements. Had the appellant sought the Council's collaboration with the drafting of the S106, it would have needed to have prompted this directly, and, potentially, may have been required to provide a cost undertaking for any legal costs incurred. On submission of the unilateral undertaking (UU), the Council provided the comments by the date specified by the Planning Inspectorate.
10. The second attempt to provide a satisfactory planning obligation in the form of a supplemental to the UU, the appellant sought to introduce additional clauses to allow for any amount of affordable housing to be selected. This was a new dimension to the appellant's case which added complexity and further time to the consideration of the appeal.
11. Even though there are many factors which indicate that the development of the appeal site is a logical outcome, including the established fallback, the absence of a planning obligation to secure the necessary affordable housing and infrastructure is a determinative factor in the appeal. It is not an issue that could have been resolved by way of planning condition.
12. Overall, I do not concur that the Council was unwilling to enter into negotiations or sought to deliberately delay the development. I do consider that there is room for improved efficiency on the part of the Council, particularly in respect of seeking external advice as already indicated. However, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and an award of costs is not warranted.

H Nicholls

INSPECTOR