
Costs Decision

Site visit made on 8 April 2025

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2025

Costs application in relation to Appeal Ref: APP/B3438/W/25/3358635

Land Off Main Road, Hollington, Nr Stoke on Trent

- 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 D. and J. Allen for an award of costs against Staffordshire Moorlands District Council.
 - The appeal was against the refusal of planning permission for erection of 3no. affordable dwellings (Discounted Market Sales Housing).
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal. This application is made on procedural grounds. It is not clear whether the claim is made for a full or partial award and I have therefore considered the claim on either basis. Consequently, the details in my banner heading above do not distinguish the nature of the award sought.
3. The applicants seek an award in relation to the preparation and submission of a planning obligation to the appeal. In this regard, a bilateral agreement was initially progressed by the main parties but ultimately it became a unilateral undertaking (UU) instead. The applicants claim that the Council has behaved unreasonably by failing to co-operate, delaying the provision of information, supplying a legal agreement template that the Council later reversed without sufficient justification, and changing their stance at a late stage in the process, resulting in additional anxiety, time and unnecessary costs.
4. The PPG gives further advice as to when local planning authorities will be at risk of an award being made against them. The examples listed as unreasonable behaviour on procedural grounds include a lack of co-operation with the other party and delay in providing information or other failure to adhere to deadlines.
5. As set out in my appeal decision, the appeal was processed initially under the hearing procedure, whereby any planning obligation is to be submitted no later than two weeks (10 working days) before any hearing, and a draft is acceptable. In this case, that deadline was 19 March 2025. Following a procedural review at the

Council's request, the appeal procedure was altered to that for written representations, where planning obligations are required at the time the appeal is made. However, the hearing deadline for any planning obligation was retained in the interests of fairness.

6. The applicants' claim for costs was made on 13 March and the Council's rebuttal was submitted on 20 March. Communications between the main parties regarding the agreement continued after the submission of the claim for costs. On 19 March the applicants sought an extension to the appeal deadline for the obligation to 28 March and requested guidance from the Planning Inspectorate (PINS) as to whether a UU or s106 (bilateral) agreement was the appropriate mechanism. The request for an extension to the deadline was granted and the PINS case officer made clear that it is not the role of an Inspector to advise on an appropriate form of agreement, and the main parties were referred to relevant guidance. Further, that as an application had been made for costs, it was made clear that the granting of the request to extend the deadline did not infer any acceptance or otherwise of any stated reasons for delay in the submission of any planning obligation; and that such matters should be addressed in formal submissions regarding costs applications. No further formal submissions on costs were made, save for reference within the applicants' final comments. The UU was received on 28 March.
7. The absence of a planning obligation did not form any part of the Council's reason for refusal, and there was no dispute that a planning obligation to secure the proposed affordable housing units would be necessary in the event the appeal succeeded. Therefore, the preparation of a planning obligation was a necessary undertaking as a normal part of the appeal process, and therefore any expenditure incurred in its preparation is not an unnecessary or wasted expense as a matter of principle. However, the appellants' claim is founded on the Council's change of position from a bilateral agreement to a unilateral one during the appeal process. The applicants also draw my attention to a lack of communication during the determination phase, and that the application was not determined within the statutory timeframes. However, it would have been open to the applicants to appeal against a failure to determine the planning application on the part of the Council.
8. The evidence indicates that the main parties communicated by email prior to the appeal being made on 9 January 2025 to progress a bilateral agreement. The Council's standard templates were provided to the applicant in December 2024 and the Council invited suggested amendments and evidence of title on 6 January 2025. A draft agreement to include the applicants' suggested amendments was sent to the Council on 14 February 2025. However, this represents a period of almost 6 weeks or about 30 working days on the part of the applicants, and there is no evidence before me to explain the reasons for this interval. The applicants suggest that the Council raised no concerns at that time, and contend they were surprised to learn of the Council's concerns on receipt of the Council's statement of case, submitted one week later on 21 February in full accordance with the appeal timetable.
9. The applicants raised concerns with the Council by email on 28 February, requesting actions pursuant to a bilateral agreement. The applicants also sought the assistance of PINS in an email dated 5 March, claiming a lack of communication on the part of the Council, which was cross copied to the Council's representatives. In response, the PINS case officer reminded the main parties of

- the deadline for any planning obligation and referred the main parties to the relevant procedural guidance.
10. The Council response to the applicants by email on 7 March set out that the draft agreement would not be 'CIL¹ compliant', with reference to the decision notice and statement of case, and that the Council could not be party to the agreement, such that it would need to be a unilateral one. I note that the Council also set out their agreement to the suggested deletions by the applicants, together with further proposed amendments, and clearly indicated further co-operation to ensure that the UU would not be deficient in terms of content, with a request for a response within one week, during which the Council's solicitor would be on annual leave.
 11. One week later on 14 March (the day after the claim for costs was made), the applicants emailed the Council seeking further clarifications. These included a request for clarification on CIL compliance in relation to the draft agreement, with reference to the fact that the Council did not have a CIL charging regime, and that affordable housing is exempt from such regimes. The applicants appeared to consider that the draft agreement sought a CIL payment, but it is clear from the content of the draft agreement that it did not.
 12. The Council outlined in its emailed response on 18 March that the reference to CIL compliance was in regard to the relevant tests for planning obligations, as set out in regulation 122 of the Community Infrastructure Levy Regulations (rather than a requirement for a CIL payment), with references to the National Planning Policy Framework; PINS Guidance: Planning obligations: good practice advice; and the relevant part of the PPG². Further explanations were reasonably and clearly provided by the Council with regard to provisions in the agreement concerning any open space within the development and the Council's legal costs. The Council is entitled to reach its own view on whether it can be party to a legal agreement and whether an obligation meets the relevant tests. The PPG clearly states that the tests apply whether there is a charging levy or not.
 13. I appreciate that the applicants' concerns in transitioning to a UU were founded on a view that a previous appeal Ref: APP/B3438/W/20/3253262 was dismissed on the grounds that a UU would not adequately ensure the long-term occupancy of the proposed dwellings in that scheme by individuals with demonstratable housing needs. However, on a full reading of that decision, it is clear that the Inspector's concerns were founded on the detailed content of the UU under consideration at that appeal. For example, the decision states "... *the UU refers to and requires action from the Council in order to carry out its obligations. However, the Council is not a signatory and cannot therefore be bound by any of the UU's undertakings. Moreover, the registered housing provider is not identified and nor does the UU set out the arrangements for securing a registered provider.*" I found no reasoning in that decision to suggest that a UU could not be a suitable mechanism as a matter of principle, rather than a bilateral agreement.
 14. In the Council's view, it is a simple process to convert a bilateral agreement to a unilateral one. This view is not disputed in the applicants' final comments, and based on my own experience and observations, I find no reason to disagree with the Council's view. I note that the submissions and email exchanges before me refer to the input of the applicants' representatives to include the applicants'

¹ Community Infrastructure Levy

² Planning Obligations: Paragraph: 002 Reference ID: 23b-002-20190901

solicitor. Furthermore, the email exchanges 18-19 March demonstrate that the Council assisted in this regard by converting/editing the draft bilateral agreement to a unilateral one, with tracked changes and the Council clearly set out that this was without prejudice to its own position at appeal. It seems to me that the Council in effect prepared the draft UU on behalf of the applicants, albeit after the claim for costs was made. In addition, the Council expressed concerns that not all suggested amendments had been accepted and were without any explanation or comment; some remained and were without any indication of agreement; and further changes had been made without tracked changes. This therefore required further time and effort on the Council's part to track changes and respond accordingly. The Council indicated a willingness to expedite matters by telephone and discussion. Communications regarding the draft agreement contain explanations and annotations setting out the Council's positions and concerns, which I find to be clear and reasonable.

15. I have found that the definition of 'suitable offer' for the affordable housing units in the UU does not conform to the definition of local need in accordance with the Council's Developer Contributions Supplementary Planning Document 2023 (SPD). This matter does not appear to have been identified by either party within the various emails and attached iterations of the draft agreements considered during the appeal. I note that the Council's templates for bilateral agreements do not conform to the SPD in this regard. That is a matter for the Council to resolve. Nonetheless, this matter was clearly identified in the Council's statement of case on 21 February in accordance with the appeal timetable, well before the first obligation deadline of 19 March and the extended deadline of 28 March, such that it could have been reasonably addressed by the applicants during the course of the appeal.
16. Drawing all of the above together, the preparation of a legal agreement is a normal part of the appeal process, and the expense incurred to prepare such an agreement is a necessary one. Without the initial delay of almost six weeks on the part of the appellants in progressing comments on a skeleton agreement, matters may have been resolved sooner. A lack of availability on the part of the Council's solicitor for one week's annual leave did not result in a significant delay. While the Council changed its position on being party to a bilateral agreement, it is entitled to do so and did so within the appeal timetable. The applicants had sufficient opportunity to address a UU before the extended appeal deadline and did so. Both before and after the costs claim was made, the Council co-operated with the production of a draft agreement.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Moore

INSPECTOR