
Costs Decision

Inquiry opened on 28 August 2014

Site visit made on 1 October 2014

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 03 June 2015

Costs application in relation to Appeal Ref: APP/R3325/A/13/2203867 Land East of Crimchard, Chard

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by David Wilson Homes South West Ltd for a partial award of costs against South Somerset District Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a residential development of up to 110 dwellings, open space, and SUDs basin, together with formation of new access and related works.
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Decision

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

The submissions for the Appellant

2. These were made in writing and elaborated upon at the Inquiry.

The response by the Council

3. This was made in writing and elaborated upon at the Inquiry.

Reasons

4. As set out in paragraph 030¹ of the PPG², costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraph 049³ of the PPG sets out a series of examples of unreasonable behaviour by local planning authorities that might result in an award of costs. The appellant makes reference to several of relevance: failing to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised and inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy; and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed.

¹ Reference ID: 16-030-20140306

² Planning Practice Guidance

³ Reference ID: 16-049-20140306

6. In that context, the appellant draws attention to what it terms the unreasonable behaviour of the Council in relation to putative reasons for refusal Nos.2 and 3. Reason for refusal No.2 relates to the purported inadequacy of the submitted Travel Plan when measured against the guidance published by the County Council and the Framework⁴.
7. The County Council accepted and offered its approval of the Travel Plan. The Council's witness produced to deal with the Travel Plan accepted that the guidance published by the County Council accorded with the Framework. I accept the proposition put forward by the Council that it is free to take a different view of the Travel Plan than the County Council. However, if it is to do so, then it needs to produce evidence to substantiate its position. What was produced, in my view, were vague, generalised and inaccurate assertions, unsupported by any objective analysis.
8. On that basis the Council failed to produce evidence to substantiate reason for refusal No.2. That constitutes unreasonable behaviour and the appellant has been put to the expense of addressing this matter unnecessarily.
9. Reason for refusal No.3 relates to the failure of the proposed development to make what is termed any positive contribution to the Council's strategic approach to future development as outlined in the Chard Regeneration Framework, and in particular, provision for highway infrastructure critical for the future delivery of the Chard Regeneration Framework. As became evident to the appellant later, in correspondence, the provision sought was a financial contribution of £750,000.
10. Mirroring the statutory requirement of Regulation 122⁵, paragraph 204 of the Framework says that planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
11. The Council's witness accepted that the impact of the proposal on the Convent junction would be negligible. No substantive evidence was produced to show how the development proposed could reasonably be expected to contribute to any other piece of highway infrastructure relied upon for the Chard Regeneration Framework. In that light, the contribution sought by the Council fails all the tests of Regulation 122 and falls contrary to the advice in the Framework. In simple terms, the Council has sought to require that the appellant enter into a planning obligation which does not accord with the law or relevant national policy. That is unreasonable behaviour and the appellant has been put to the expense of addressing this matter unnecessarily.

Costs Order

12. 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 South Somerset District Council shall pay to David Wilson Homes South West Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with putative reasons for refusal Nos.2 and 3.

⁴ The National Planning Policy Framework

⁵ Of the CIL Regulations 2010

13. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Paul Griffiths

INSPECTOR