The Planning Inspectorate

Costs Decision

Site visit made on 22 September 2020

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Costs application in relation to Appeal Ref: APP/X1165/W/20/3250977
Land to the north of Totnes Road, Collaton St Mary, TQ4 7PW

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Taylor Wimpey UK Ltd for a full award of costs against Torbay Council.
- The appeal was against the refusal of outline planning permission for up to 73 dwellings (including market and affordable housing) with all matters reserved except access arrangements to be provided directly onto Totnes Road via an access junction.

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The Council approved what is acknowledged to principally be an identical scheme to that at appeal and no longer objects to that scheme subject to a section 106 agreement being signed. The Council is satisfied that the unilateral undertaking submitted on behalf of the appellant accords with the provisions of section 106 of the 1990 Act and that the obligations satisfy the requirements of the Council's adopted Planning Contributions and Affordable Housing SPD. A statement of case was not offered because the Council no longer considered that the development presented a risk of flooding following consideration of the resubmission under slightly different circumstances.

4. The Council considers that the additional correspondence from South West Water (SWW), along with the Lead Drainage Officer's attendance at the committee meeting, presented a material change in circumstances. However, SWW re-confirmed its earlier comment that it had no objection and added that it would deliver necessary improvements to its infrastructure as would apply to any development proposals within the Torbay area. The Lead Drainage Officer answered questions about the proposal, but there is nothing to indicate that Members were given any new information that was not available when the committee considered the application that is the subject of this appeal. I have not been advised about any new or updated technical evidence presented to the committee in considering the duplicate proposal. The Council refers to Ofwat's changes in 2018 about funding arrangements for infrastructure, but

these preceded the 21 October 2019 refusal of the appeal scheme. There is nothing to indicate that the evidence base materially changed between 21 October 2019 and when the Council subsequently resolved on 10 August 2020 to approve the duplicate application subject to the completion of a section 106 legal agreement.

5. The Council's officers considered that the drainage issue could be dealt with by the imposition of appropriate planning conditions. Members can of course come to a different judgement, but in this case offered no reason for rejecting the advice other than non-compliance with Paignton Neighbourhood Plan Policy PNP1. For the reasons set out in my Appeal Decision I do not consider the proposed development to be in breach of Policy PNP1. But if the Members were right and there is some conflict with this policy then there is nothing to indicate that they weighed up this conflict against other policies to come to a judgement about compliance with the development plan as a whole.

6. I consider that the Council refused planning permission on a ground that was capable of being dealt with by suitable conditions. This decision prevented development that should clearly have been permitted having regard to its accordance with the development plan, national policy and other material considerations. I find that the Council's action was unreasonable and resulted in Taylor Wimpey UK Ltd incurring the unnecessary expense of pursuing an appeal. A full award of costs against Torbay Council is therefore justified.

Costs Order

7. 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 Torbay Council shall pay to Taylor Wimpey UK Ltd, the full 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.

8. The applicant is now invited to submit to Torbay 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.

John Woolcock
Inspector