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## Costs Decisions

Site visit made on 21 November 2017

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 19<sup>th</sup> December 2017

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### **Costs application in relation to Appeal Ref: APP/X2220/W/17/3179235 Land on the south west side, Singledge Lane, Whitfield Kent**

- 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 Abbey Developments Limited for a full award of costs against Dover District Council.
  - The appeal was against the refusal of planning permission for 133 new residential units including 40 affordable homes, new vehicular and pedestrian access, internal access roads, car parking, landscaping, provision of open space and a locally equipped children's play area (LEAP).
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#### **Decision**

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

#### **Reasons**

2. The Planning Practice Guidance (the PPG) advises in its section on appeal costs that these 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. A full award of costs is sought by the applicant and the application has been made on a substantive basis. The applicant contends that the Council's appeal case has failed to substantiate both of the refusal reasons. The reasons for refusal contending that: 1) the provision of the Suitable Alternative Natural Greenspace (SANG) to mitigate the development's effects on the nearby Special Area of Conservation (SAC) could 'preclude' the future widening of the A2; and 2) inadequate surface water drainage arrangements would be provided as part of the development.
4. The development would provide a substantial area of SANG and part of it coincides with a strip of land that has been safeguarded for the possible dualling of the A2 under the provisions of Policy TR4 of the Dover District Local Plan of 2002 (the Local Plan). Highways England (HE) is the highway authority for the A2. Importantly HE raised no object to the development, with it submitting that it has no current plans to implement a dualling scheme, with the original highway scheme that gave rise to Policy TR4's inclusion in the Local Plan having been cancelled in the past. While the Council contends that the inclusion of a reference to the dualling of the A2 in Kent County Council's recently published Transport Plan is indicative of the need for a scheme to be implemented, the County Council is not the relevant highway authority and its view is not shared by HE. I therefore consider that

the Transport Plan's reference to the dualling of the A2 added little to the Council's case.

5. The site forms a small part of the Whitfield Urban Extension (WUE) and the Council adopted a supplementary planning document (SPD) in 2011 to guide the WUE's implementation. As part of its appeal case the Council has argued that the dualling of the A2 is necessary to facilitate the WUE's implementation. However, the SPD has not been written in those terms, with none of the plans in the SPD depicting the land subject to Policy TR4. In determining the appeal I have concluded that there is no evidence of the WUE's implementation being dependent on the A2's dualling.
6. I consider that the Council was misguided in finding that the development's SANG would be capable of precluding the widening of the A2, when it was clearly evident that HE had no objection to the development nor any plans to implement a dualling scheme in the foreseeable future. Notwithstanding the dualling scheme's status the applicant sought to allay the Council's concern by undertaking some concept design work to demonstrate that the intended SANG could coexist with the implementation of a dualling scheme. In response to the applicant's initial concept design HE stated in an email of 19 October 2016 that it accepted, in principle, a dualling scheme could be implemented without any significant implications for the appeal development.
7. While HE stated that matters of detail required further investigation, I consider HE's response to the initial concept design demonstrates that the SANG would not become a significant impediment to the dualling of the A2.
8. Prior to the appeal's submission the applicant instructed its highway consultant to undertake further concept design work to address HE's comments regarding the initial concept design. Further discussions were held with HE in February 2017 and the appellant's meeting note<sup>1</sup> records that HE was still of the view that a dualling scheme could be implemented without significantly encroaching into the appeal site. The output of that meeting was the submission of further concept designs with the appeal. I consider the submission of the second round of concept designs, together with the results from a safety audit, clearly demonstrate that the dualling of the A2 could coexist with the SANG and that the Council's contention that the provision of the SANG could preclude the A2's dualling was misguided. For the purposes of the appeal's determination I consider that it was reasonable for the applicant to have undertaken the second round of concept design work and safety auditing. That evidence demonstrating that there was nothing insurmountable arising from the comments originally made by HE.
9. Notwithstanding the lengths the applicant has gone to in demonstrating that the SANG and a widened A2 could coexist with one another, the Council has sought to argue that weight should not be attached to the applicant's concept design work. However, that contention has not been supported by any technical evidence, ie alternative concept designs, demonstrating that the applicant's evidence relating to this issue should not be accepted as being a reasonable representation of the situation.
10. I consider that the applicant has demonstrated that a dualling scheme and the SANG could coexist with one another and I am of the opinion that the

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<sup>1</sup> Appendix 20 of the applicant's appeal case

Council's case has not substantiated its reliance on the first reason for refusal. I consider the second round of concept design work has served to reinforce the untenable nature of the first reason for refusal.

11. I therefore conclude that it was unreasonable for the Council to have refused planning permission on the basis that the development could preclude the dualling of the A2 or that the implementation of a dualling scheme would result in the development providing inadequate mitigation for its effects on the SPA. With the Council's appeal evidence failing to substantiate the inclusion of the first reason for refusal I consider that the Council acted unreasonably when regard is paid to the second bullet point stated in paragraph 049 of the PPG<sup>2</sup>.
12. With respect to the issue of surface water drainage I consider that there was a clear opportunity for the Council to have reviewed whether this was an insurmountable issue. That is because in the five weeks between the Council resolving to refuse planning permission and the decision notice being issued revised surface drainage details had been sent to the lead flood authority (LFA) by the applicant. Seemingly the LFA indicated to the applicant that the revised details had addressed its concerns. However, for reasons that have not been explained by the Council it did not seek the LFA's comments on the revised drainage scheme. Had the Council sought the LFA's comments then it would seem likely that the inclusion of the second reason for refusal could have been avoided, with this being a matter capable of being addressed by the imposition of a planning condition.
13. I consider the Council's failure to seek comments from the LFA prior to its decision notice being issued resulted in the unreasonable inclusion of the second reason for refusal. In that respect I consider that the Council acted unreasonably when regard is paid to the fourth bullet point stated in paragraph 049 of the PPG.

### **Conclusion**

14. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030, 032 and 049 (the second and fourth bullet points), I conclude that it was unreasonable of the Council to have refused planning permission, with the result that the applicant has directly incurred unnecessary and wasted expense in submitting its appeal. An award of costs is therefore justified.

### **Costs Order**

15. 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 Dover District Council shall pay Abbey Developments Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in making its appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

*Grahame Gould*

INSPECTOR

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<sup>2</sup> Paragraph: 049 Reference ID: 16-049-20140306