



Department for
Communities and
Local Government

Mr Ian Stuart
Stop Allaston Development
c/o APLD Ltd
Church End
Paul Mead Edge
Stroud
Gloucestershire
GL6 6PG

Our Ref: APP/P1615/A/14/2218921

21 December 2015

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 & 320
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY STOP ALLASTON DEVELOPMENT (SAD)
LAND OFF DRIFFIELD ROAD, ALLASTON ROAD AND COURT ROAD, LYDNEY,
GLOUCESTERSHIRE.
APPLICATION FOR A PARTIAL AWARD OF COSTS**

1. I am directed by the Secretary of State to refer to his decision letter of 21 December 2015 on the above named appeal.
2. This letter deals with your application for a partial award of costs against Allaston Developments Ltd in respect of appeal ref: APP/P1615/A/14/2218921. The application as submitted and the developer's response are recorded in the Inspector's costs report (CR), a copy of which is enclosed
3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's costs report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions are set out at paragraphs 3-11 of his costs report. He recommended that your application for a partial award of costs be granted (CR12).
5. Having considered all the available evidence, the Secretary of State agrees with the Inspector's conclusions in his costs report and accepts his recommendation. The Secretary of State concludes overall that a partial award of costs against Allaston Developments Ltd on grounds of unreasonable behaviour that caused unnecessary or wasted expense is justified.

Jean Nowak, Decision Officer
Planning Casework
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6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 174 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that Allaston Developments Ltd pay to Stop Allaston Developments partial costs of the inquiry proceedings incurred as a result of the appellant's decision to submit masterplan rev B (which included access details) at a late stage in the proceedings and the request for an adjournment on day 4 of the Inquiry; such costs to be taxed in default of agreement as to the amount thereof.
7. You are invited to submit to Forest of Dean District Council details of those costs, with a view to reaching agreement on the amount. A copy of the guidance note on taxation is enclosed.

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the high court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the date of the Costs decision.
9. A copy of this letter has been sent to Hunter Page Planning as agents for Allaston Developments Ltd.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by Secretary of State to sign in that behalf



The Planning Inspectorate

Costs Report to the Secretary of State for Communities and Local Government

by Neil Pope BA (Hons) MRTPI

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

Date: 13 April 2015

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

FOREST OF DEAN DISTRICT COUNCIL

APPEAL BY ALLASTON DEVELOPMENTS LTD

Inquiry held on 19, 20, 25, 26 November 2014 and 4, 5, 6 and 10 February 2015
Site visits undertaken on 18 November 2014 and 3 and 9 February 2015

Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire.

File Ref: APP/P1615/A/14/2218921

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**Land off Driffield Road, Allaston Road and Court Road, Lydney,
Gloucestershire.**

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Stop Allaston Development (SAD) for a partial award of costs against Allaston Developments Ltd.
- The inquiry was in connection with an appeal against the refusal to grant outline planning permission for proposed residential development of up to 200 dwellings including 40 self-build plots and 37 retirement apartments, affordable housing community building (186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access roads. (Amended description)

Summary of Recommendation: that a partial award of costs be made

The Submissions for Stop Allaston Development (*Documents 58 and 61*)

1. In summary, the appellant had attempted to 'design at appeal'. It had delayed providing information and had introduced fresh and substantial evidence at a late stage in the proceedings. This had resulted in the Inquiry being adjourned, wasted and unnecessary expense being incurred by a party with limited financial resources and the proceedings being prolonged. This amounted to about 13 days additional work.

The Response by Allaston Developments Ltd (Document 60)

2. In summary, the revised masterplan was a response to the Neighbourhood Plan and was submitted in the light of decisions by the Secretary of State elsewhere. Consultation was only necessary because of the Inspector's ruling. SAD had not objected to the adjournment. The highway drawings and wireframes were produced to address concerns raised by SAD. A costs award was not justified.

Inspector's Conclusions

3. The Government's Planning Practice Guide includes advice relating to the award of costs in appeal proceedings. Amongst other things, it advises that parties normally meet their own expenses and costs may only be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The costs regime is intended to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. Appellants may be at risk of an award of costs where they introduce fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen.
5. The revised masterplan (rev B) included alterations to accessibility within the site for vehicles, cycles and pedestrians. Access was not a reserved matter and such alterations fell within the remit of "access" as set out in the 'Interpretation' in The Town and Country Planning (Development Management Procedure) (England) Order 2010. It should therefore have been apparent to the appellant from the outset that the access revisions to the masterplan would require consultation before they could be properly considered by the Secretary of State.

6. Even if the interpretation of "access" is set aside, given the extent of public interest in the proposals (including SAD's involvement as a Rule 6 party) it is difficult to comprehend the appellant's stance in submitting the revised masterplan at a late stage in the proceedings without, at the very least, alerting SAD in advance of its intention to do so. It was also open to the appellant to undertake consultation prior to the opening of the Inquiry in order to avoid the risk of an adjournment. The Neighbourhood Plan had been published several months before the date for the exchange of proofs of evidence.
7. Given my ruling on day 1 of the Inquiry in respect of the revised masterplan it is incomprehensible why the appellant took until day 4 of the Inquiry and after the completion of SAD's evidence and the appearance of its own landscape witness to seek an adjournment to allow for the necessary consultation. The appellant's actions caused a significant delay to the proceedings and were contrary to the spirit of securing the delivery of a more efficient planning system. I estimate that about 1.5 Inquiry days were spent dealing with matters relating to a masterplan (rev A) that the appellant no longer wished to proceed with. This amounted to unreasonable behaviour by the appellant which caused SAD to incur unnecessary and wasted expense.
8. As a result of the appellant's request for an adjournment of the Inquiry SAD considered the revised masterplan and its expert witnesses produced supplementary proofs of evidence. This would have involved discussions between the witnesses and the advocate acting for SAD. Some, but not all, of this evidence and its preparation would have involved additional expense being incurred by SAD. In particular, part of the supplementary proof of evidence from SAD's landscape witness related to matters that had already been discussed at the Inquiry. The wireline drawings that were produced could also have been provided¹ at an earlier stage in the proceedings. The wirelines produced by the appellant were a response to SAD's drawings. It was not unreasonable for the appellant to respond in this way.
9. The technical highway drawings submitted by the appellant in January 2015 go beyond, in my experience, the level of detail usually required by a local planning authority in order to assess an application whether that be in outline with access not reserved or a detailed permission. These drawings were submitted to address matters initially raised by the Highway Authority during the adjournment and were copied to SAD. Limited Inquiry time was taken discussing them. The appellant did not act unreasonably by producing these technical drawings.
10. Some Inquiry time was spent discussing the appellant's drawing showing finished floor heights and ridge levels. This drawing was submitted after the resumption of the Inquiry. Whilst the details were of much interest to SAD, which had argued that landscape and visual impact could not be properly assessed without them, it related to matters that had yet to be determined and which had not been requested by the Local Planning Authority. It was produced in response to drawings submitted by SAD and the arguments over the accuracy of both sets of wirelines. As the wirelines are only tools to aid decision making, and layout and

¹ Whilst I sympathise with the timescale facing SAD's witnesses and its advocate prior to the opening of the Inquiry this was not of the appellant's making.

appearance have been reserved, the appellant did not act unreasonably by producing this additional drawing in response to criticisms made by SAD.

11. The appellant's decision to submit masterplan rev B (which included access details) at a late stage in the proceedings and the request for an adjournment on day 4 of the Inquiry amounted to unreasonable behaviour. This caused SAD to incur some wasted and additional expense. The costs of which are likely to be far nearer the 1.5 days work that I have estimated above rather than 13 days.

Inspector's Recommendation

12. The application for a partial award of costs be granted.

Neil Pope

Inspector