
Costs Decision

Site visit made on 20 September 2016

by **Rory Cridland LLB (Hons)**

Decision date: 20th October 2016

**Costs application in relation to Appeal Ref: APP/Q3305/W/16/3152101
Land to the West of Date Palms Ltd, Ham Street, Baltonsborough,
Glastonbury BA6 8PT**

- 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 Flower & Hayes Ltd for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of planning permission for the erection of dwellings together with highway works.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it indicates that Local Planning Authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal.
3. Two reasons for refusal were provided by the Council and both were maintained as part of the appeal. My decision makes clear that I do not agree with the Council in respect of refusal reason 1 (Loss of an Employment Site) and that Local Plan (LP) Policy DP20, the key policy upon which they sought to rely, was not applicable. This was a conclusion that had been reached by the Council's Planning Officer. While the Council is not required to follow the advice of its professional officers, if a different decision is reached by members, the Council has to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. In this case no robust evidence was provided to support the Council's assertion that the proposal would be contrary to Policy DP20. Despite the references to local knowledge, little evidence has been submitted to indicate what this knowledge was or to enable an assessment of its importance. In the absence of such, it appears to me that, having regard to the development plan, national planning policy and other material considerations, refusal reason 1 cannot be substantiated and should not have been maintained. In this respect, I find that

the Council has acted unreasonably and that this has resulted in the appellant having incurred unnecessary expense in pursuing this appeal.

5. However, in respect of refusal reason 2 (Lack of Planning Obligations), at the time of determination, the appellant had not submitted an agreement securing the requisite planning obligations required as part of the development plan policies. In such circumstances, it is reasonable for the Council to refuse permission.
6. Consequently, I conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting refusal reason 1 is 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 Mendip District Council shall pay to Flower & Hayes Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting refusal reason 1 which concerned loss of an employment site.
8. 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.

Rory Cridland

INSPECTOR