

Costs Decision

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 20 January 2017

Costs application in relation to Appeal Ref: APP/D3315/W/16/3148085 Creedwell Orchard, Milverton, Somerset TA4 1PL.

- 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 S Notaro Limited for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal of planning permission for development described as an alternative proposal for 70 new homes at Creedwell Orchard, Milverton replacing extant permission for 72 homes.
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Decision

1. The application for an award of costs made by S Notaro Limited against Taunton Deane Borough Council is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case. Unreasonable behaviour may be procedural and/or substantive.
 3. The appellant is seeking a full award of costs on the basis of the Council's unreasonable behaviour in providing pre-application advice in relation to affordable housing.
 4. The Council concedes that its initial position during pre-application discussions was that there was no need to provide affordable housing based on its belief that a fallback position existed. Nevertheless, although the Council's position changed and it subsequently indicated that it would be necessary to provide affordable housing this occurred long before the application was submitted. It was not unreasonable for the Council to modify its position where the proposal was acknowledged by the appellant to be contentious and where the issues surrounding the fallback resulted in it subsequently seeking advice from Counsel, as did the appellant. In addition the Council had to respond to the appellant's change in approach to the provision of affordable housing during the application process. The Council also indicated during pre-application discussions that officers' views were not binding in respect of the future determination of an application.
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5. The appellant suggested that the local planning authority wanted to refuse the application and that the decision was politically motivated. I have seen no evidence that the Council did not approach the consideration of the application other than on the basis of a proper assessment of planning policy and material considerations and taking account of consultation responses. I therefore find that the Council did not behave unreasonably in its determination of the application and that the costs incurred in proceeding with the appeal are not as a result of unreasonable behaviour by the Council.
6. For the reasons given above I conclude that the application for an award of costs against Taunton Deane Borough Council should be refused.

Kevin Gleeson

INSPECTOR