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## Costs Decision

Site visit made on 18 January 2017

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 08 February 2017**

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### **Costs application in relation to Appeal Ref: APP/D0121/W/16/3160041 The Laurels, 83 Claverham Road, Yatton, Bristol, Somerset BS49 4LD**

- 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 North Somerset Council for a full award of costs against Mr William Howard.
  - The appeal was against the refusal of planning permission for is the proposed part demolition of a stone barn/store and construction of a detached dormer style dwelling.
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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 (PPG) 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. The PPG also explains that unreasonable behaviour in the context of an application for an award of costs may be either: procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
  3. The Council's application relates to the similarity between this appeal and a previously dismissed appeal on the same site (ref APP/D0121/W/16/3146278 – the 2016 appeal). I have been provided with the previous Planning Inspector's decision as well as the plans that were considered at that time. The Council considers that the current appeal had no reasonable prospect of success due to the similarities between the proposals.
  4. The proposal in the current appeal was for a similar development that was proposed in the 2016 appeal. The main differences were that the dwelling and attached garage were 'handed' with the lower part of the development in the present scheme being on the side of the site next to No 83 rather than No 81 as had been the case previously. Furthermore, the present scheme had fewer windows in the front elevation and an obscure glazed window. These changes meant that the Council and I considered that the scheme was acceptable with respect to the possible effects upon living conditions of adjoining occupiers.
  5. The position and size of the proposed dwelling were very similar in both proposals. The Inspector in the 2016 appeal had referred in paragraph 6 of that decision to "the broadly consistent building line" and "gaps between individual and pairs of houses giving views through to the mature trees and
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planting in private gardens". Furthermore, the Inspector stated that where they exist "these gaps play an important role in off-setting the density of built form and contribute positively to an overall verdant and spacious local character". At paragraph 8, the Inspector went on to refer to the proposed dwelling being positioned behind the established building line and also the "cramped and crowded frontage" that would result. I have reached similar conclusions about the current proposal because the position and size of the dwelling would be similar.

6. The 2016 appeal decision had been issued on 6 September 2016. The current appeal was lodged by the appellant on 20 September 2016. At that point the appellant could have considered, bearing in mind what the Planning Inspector had said in the decision, whether appealing was the best course of action.
7. The current appeal was 'started' by the Planning Inspectorate on 18 October 2016 and the Council had until 22 November 2016 to submit a statement of case. Prior to that on 9 November, the Council wrote to the appellant warning of the possible risk of costs if the appeal was continued with due to the similarities and drawing attention to the advice of the PPG. The Council recommended withdrawal of the appeal to limit exposure to an award of costs. I consider that this was sound advice from the Council but the appellant chose not to act in the manner recommended.
8. Instead, the appellant wrote back to the Council on 17 November 2016. That letter makes various statements about the Council's handling of the planning application including the failure to take account of some matters and the information required at the planning application stage. The appellant in defence of the application for costs refers to the Councils' failure to respond to that letter which I consider misses the point. It would have been more appropriate at that time for the appellant to turn his mind to whether the appeal proposal had a realistic chance of success given the decision that the Council had made and what the Planning Inspector had said in the 2016 appeal decision. There is no evidence that he did so even though there are very clear similarities between the proposals, as I have described.
9. Had the appellant reconsidered the appropriateness of the appeal following the Council's 9 November letter and withdrawn the appeal, it may have saved the Council some time in preparing the statement of case and subsequent stages of the appeal. The appellant appears from the evidence provided to have disregarded the Council's advice or the possibility of a costs award.
10. I consider that there were 2 points where the appellant should have objectively reconsidered the realistic chances of success of the current appeal scheme. The first was following receipt of the 2016 appeal decision. Given the Inspector's reasoning in that case it would clearly be difficult for the current scheme to succeed. The second point was when the appellant received the letter from the Council dated 9 November 2016. Had the appellant done so, the Council's administrative costs and costs of a planning officer preparing the case could have been reduced or would not have been necessary at all. I have also taken account in reaching my conclusions that the appellant is a professional Chartered Surveyor.
11. I therefore consider that unreasonable behaviour resulting in the unnecessary and wasted costs as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

12. 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 Mr William Howard shall pay to North Somerset Council, the 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.
13. The applicant is now invited to submit to Mr William Howard, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Andy Harwood*

INSPECTOR