
Costs Decision

Site visit made on 29 January 2018

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2018

Costs application in relation to Appeal Ref: APP/R3325/W/17/3181609 Land north of Lyndhurst Grove, Martock, Somerset, TA12 6HW

- 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 Mr R Frankpitt for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for a residential development for 35 dwellings.
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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.
3. In summary, the appellant maintains that the Council has acted unreasonably by failing to correctly apply its own policies, well-established case law and the correct planning balance. Had it done so, planning permission would have been granted and this appeal would have been unnecessary. In particular the appellant maintains that the Council:
 - a) prevented and delayed the proposed development, which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations;
 - b) failed to produce evidence to substantiate each reason for refusal on appeal;
 - c) made vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis;
 - d) acted contrary to, or did not follow, well-established case law; and
 - e) failed to correctly apply the policies of the statutory development plan, the National Planning Policy Framework ("the Framework"), and the PPG.
4. The planning Officers' report drew Committee Members' attention to the Council's lack of a 5-year housing land supply; the appeal site's location adjacent to the settlement limits of Martock; the absence of any adverse impacts; the District Valuer's view that the level of affordable housing and other planning obligations offered represented a viable proposal; and the lack of conflict with development plan policies. In these circumstances it recommended approval of this proposal,

subject to conditions. Committee Members were, of course, quite entitled to take a contrary view to that expressed in the Officers' report, provided they could give clear planning reasons why they had not followed their Officers' recommendation. However, that is not the case here.

5. Although the Council maintains that the minutes of the Committee Meeting show that the decision to refuse was made following a long and informed debate, I see nothing in these minutes to demonstrate that Members had any meaningful regard to the implications of the absence of a 5-year housing land supply. Nor is there any indication that the decision was taken in the light of the "tilted balance" set out in the second bullet point of the decision-taking part of the Framework's paragraph 14, or that any clear assessment against development plan policies was undertaken.
6. The minutes do, however, make it clear that Members were informed that the previous decision of the Area North Committee to grant permission in 2013 was a material consideration that carried great weight, although there is no real indication from the minutes that Members had any real regard to this fact.
7. Insofar as the Council's first reason for refusal is concerned, the Council's appeal statement maintains that the level of growth that Martock will receive through existing permissions is the maximum level that can be accommodated within this settlement. However, no clear justification for this assertion has been placed before me. There is no firm evidence to support this view in the Officers' Committee report; the Committee minutes; or the Council's appeal statement.
8. Furthermore, this assertion does not accord with either the content of the South Somerset Local Plan ("SSLP") Policy SS5, which makes no reference to maximum figures; or with the clear advice to Members in the Officers' report. Indeed this report informed Members that the 35 dwellings in this proposal were included as part of the housing commitments at the time of the Committee meeting, as a result of a long-standing resolution to approve. In these circumstances I have no doubt that the Council has acted unreasonably in maintaining that the proposal would result in an unacceptable level of growth for Martock.
9. With regard to the Council's second reason for refusal, both the Framework and the Council's own development plan policies acknowledge that viability is a key concern for development proposals, and a matter which has to be taken into account when the level of planning obligations, including affordable housing, is being considered.
10. The advice given to Members in the Officers' report was that the offer of 4 affordable housing units and a reduced leisure contribution represented, in the opinion of the District Valuer, a viable proposal. Again, it would have been quite in order for Members to disregard this evidence and advice, so long as it had firm, planning grounds so to do. But there is nothing before me to indicate that the Committee's decision was taken on any such, firm alternative evidence. As the appellant points out, all the minutes appear to indicate is unfounded speculation on the viability assessment.
11. Having regard to all the above points, I find that unreasonable behaviour as described in the PPG, has been demonstrated, and that this has resulted in unnecessary or wasted expense for the appellant in having to pursue this appeal. Because of this, I consider 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 South Somerset District Council shall pay to Mr R Frankpitt, 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 South Somerset District 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.

David Wildsmith

INSPECTOR