



Costs Decision

Hearing Held on 20 August 2019

Site visit made on 20 August 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Costs application in relation to Appeal Ref: APP/D0121/W/18/3215597 Land south of Crookes Lane, Kewstoke, Somerset, BS22 9XB

- 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 Simon for a full award of costs against North Somerset Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a proposal described as an "Outline application for the erection of 20 dwelling houses with associated access and landscaping."
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Decision

1. The application for costs is refused.

The submissions for the Mr Simon:

2. This was made in writing prior to the event. In summary, the costs application is made due to reasons including the late raising of ecology issues which were not a reason for refusal; late evidence being submitted of a possible offer from the Council to purchase the site for a school; and in relation to updated information provided with an updated sequential test.

The response by North Somerset Council:

3. The Council have responded and refuted all the claims and given reasons for the evidence being submitted and what was required. Furthermore, the Council state that the applicant should have been fully aware of the ecological circumstances of the site and that they still do not feel that it warranted being a reason for refusal.

Reasons

4. The Planning Practice Guidance 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.
5. With regards to the ecology issues, I am aware that there was no reason for refusal from the Council that related to ecology. However, it was mentioned in the Delegated Report by the Planning Officer. The Council did raise the issue further in their Statement of Case, suggesting the appellant seek to address the issue further, particularly relating to the effect of the development on

- nearby designated sites, although by then there was only a short time until the Hearing.
6. It is not clear why the Council concluded that detailed surveys were necessary to inform any proposed on-site avoidance and mitigation, but this was not requested at the time. It is also not clear from the Delegated Report why it was considered that without these surveys this was not grounds for refusal. Furthermore, whilst recognising the site is within close proximity to the Severn Estuary European Site (SAC, SPA, Ramsar) and that this would need a consultation with Natural England, why this was not done.
 7. Whilst I understand that these matters would have led to frustration and concern for the appellant, being that there was no ecology reason for refusal and these issues were raised again soon before the Hearing, these were nonetheless important matters that needed to be addressed. Whilst I am of the opinion that these issues would have been better raised in detail within the planning application process (to give the appellant more time to address the concerns even if they were not to be a reason for refusal) the appellant was made aware in sufficient time to get an Ecologist response and for the Ecologist to be present at the Hearing.
 8. Therefore, even if these matters were raised in detail at an early stage, it still would have resulted in a cost to the applicant to obtain the services of an Ecologist to be involved. These are matters which the Council should raise and the impact to the Severn Estuary ecology designations, for example, needed to be addressed. As such, whilst I understand the argument that the Council may have acted unreasonably it has not resulted in a clear additional cost to the appellant over that which would have been necessary if the matter was raised at the planning application stage.
 9. The applicant has also raised the issue of the email sent 8 August 2019 which seems to suggest that the Council had agreed to purchase the site for a school. I understand that the Council had not tried to purchase the site before and that this was evidence revealed close to the Hearing date. However, as discussed at the Hearing, there does not appear to be a formal decision by the Council for this to take place and no bid has been submitted. As such this evidence has not had a bearing on my decision to dismiss the appeal and it is not clear what cost this may have resulted in by the appellant, who were already addressing this matter as one of the main issues.
 10. With regards the sequential test in response to the flood risk issue, I can see no reason why the use of the most up-to-date data to inform this process would be unreasonable. The applicant has themselves described the process of providing an updated sequential test as a useful exercise, which has been important evidence in considering this main issue for the appeal.
 11. Finally, the Council did raise the appeal decision for the site at 155 Old Church Road in Clevedon (ref: APP/D0121/W/18/3215671) after the Hearing. However, the decision was issued after the Hearing event concluded and therefore was not available before. The applicant did have time to comment, which was received, and this was taken into consideration. The Council in submitting this appeal did not provide a full commentary or assessment of how this other decision related to this appeal, but they did make it clear that they felt it was relevant in respect to flood risk and the sequential test. I consider this was satisfactory and did not represent unreasonable behaviour.

12. Considering all the above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. For the reasons set out above, an award of costs is not justified.

S Rennie

INSPECTOR