



Costs Decision

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2020

**Costs application in relation to Appeal Ref: APP/D0121/W/19/3242059
58 Long Ashton Road, Long Ashton, North Somerset, BS41 9LE**

- 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 Ironamber Ltd. for a full award of costs against North Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of 4 no. semi-detached 4-bedroom houses.
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Decision

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

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
3. The appeal follows the refusal to grant planning permission for the erection of 4 no. semi-detached 4-bedroom houses. Subsequent to the lodging of the appeal against this refusal, the Council granted planning permission for four semi-detached houses on the appeal site under Ref: 19/P/2315 in January 2020. The Council has advised that, based on the information put forward with that subsequent application, it no longer wishes to defend that part of the reason for refusal of the appeal development relating to the loss of an undesignated green space.
4. The applicant contends that the withdrawal of this element of the reason for refusal amounts to procedural unreasonable behaviour and that its late withdrawal "undoubtedly led to the cost of incurring the appeal". The applicant suggests that this element should never have been brought to bear as it was always apparent that the site is previously developed land as it formerly accommodated built development in the form of a substantial dwelling and a row of cottages. The applicant considers the Council's position at the time of the determination of the application that the site was not previously developed land is vague and suggests that had the Council's Planning Officer entered onto

the western part of the site when visiting the site in October 2017, the remains of the cottages would have been apparent.

5. The Council's response is that as it accepted that residential development on the site was acceptable in principle, it did not matter whether it considered the site to be previously developed land or not. The Committee Report confirms that the Council considered the principle of the development of the site to be acceptable. However, it is clear from the Committee Report that, at the time of determining the application, the Council considered the principle of developing the whole site to be unacceptable based on the loss of the "undeveloped green space which is on the south-western half of the site". This view led to the invoking of Policy SA6 of the Sites and Policies Plan Part 2, which seeks to protect undesignated green space.
6. The Council indicates that the "comprehensive package of information" with the subsequent application is the reason for no longer wishing to defend this element of the reason for refusal. However, the historical development of the site was explained in the Planning Statement submitted with the application. The Council has not explained what additional explanations of the previous history of the site were put forward in this information that led it to change its mind on the status of the site as a whole. Based on the evidence before me, I therefore agree with the applicant that the Council behaved unreasonably in failing to recognise that the site is previously developed land and consequently introducing a consideration into the reason for refusal that it subsequently decided not to defend.
7. In order to merit an award of costs, the Council's unreasonable behaviour must have directly caused the applicant to incur unnecessary or wasted expense in the appeal process. The notification from the Council that it no longer wished to defend the element of the reason for refusal relating to undesignated green space narrowed the issues in the appeal but was received after the appeal had been lodged and the applicant had submitted a Statement of Case. This Statement therefore responds to the matter of undesignated green space and Policy SA6 which, in the light of the Council's subsequent decision, has resulted in a degree of unnecessary and wasted expense.
8. However, this consideration only formed part of the reason for refusal; the Council clearly also has concerns over the effect of the proposed development on the character and appearance of the Long Ashton, Yanley, Westleaze and Wyke Conservation Area due to its bulk and design. Even had the loss of undesignated open space not formed part of the reason for refusal, it seems very probable that the application would still have been refused. Although it would have narrowed the issues prior to the lodging of the appeal I therefore do not consider that had the Council accepted that the site was previously-developed land from the outset the need for the appeal would have been avoided as the applicant suggests may have been the case.
9. The applicant also contends that the Council's behaviour during the course of the application amounts to substantive unreasonable behaviour in a number of ways, including a failure to acknowledge the lack of a 5-year supply of deliverable housing sites. Although the Council accepts that it cannot demonstrate a 5-year housing land supply, the Committee Report makes no mention of this matter. Neither is there any application of paragraph 11 d) of the Framework within the Report – the Council's contention that the 'tilted

balance' does not apply because of the harm to the Conservation Area under footnote 6 to paragraph 11 first arises in the Council's Statement of Case.

10. I consider that the Council behaved unreasonably in, from the evidence before me, failing to consider paragraph 11 d) of the Framework in determining the application. Although, given the conclusion of the Committee Report, I am not persuaded that had the Council explicitly considered paragraph 11 d) it would have approved the application, had this matter been covered in the Committee Report it would have narrowed the issues for the appeal. The appellant incurred unnecessary expense in setting out the situation regarding the Council's demonstrable supply of housing land and the consequent engagement and implications of paragraph 11 d) of the Framework.
11. The lack of a 5-year housing land supply means that the most important policies of the development plan are out-of-date. The conservation policies of the development plan are weakened as they are not fully consistent with the Framework in that they do not allow for the balancing of harm to designated heritage assets against the public benefits of a proposed development.
12. However, these policies still have weight and the Council properly considered the proposed development against these policies. Whilst I have come to a different conclusion in my determination of the appeal, I do not consider that the Council behaved unreasonably in concluding that the development would conflict with the conservation policies of the development plan. I therefore do not accept the applicant's contention that when all matters are considered and weighed, including the Council's lack of consideration of the housing land supply issue, the proposals should have been approved without delay.
13. The applicant further contends that had the Council not refused to enter into pre-application discussions, the issues for the appeal could have been narrowed and the expenses for the appeal reduced in respect of the site constituting previously developed land. However, the application for costs refers to a 'Pre app for 4 units 18/P/4701/pre-dated 21/12/18'. A copy of this pre-application advice is Appendix 11 of the applicant's Statement of Case, which also refers to 'extensive engagement with the Council'. In any event, I have already found unreasonable behaviour by the Council on this issue for other reasons.
14. As regards whether or not the Council has been inconsistent in its refusal of the application having, according to the applicant, approved several examples locally on small sites fronting Long Ashton Road both within and adjoining the Conservation Area, the applicant has provided scant details of only one scheme. From these details the Council rightly considered the impact on the Conservation Area, which is consistent with its approach to the appeal proposal. Although from the evidence before me the Council approved that application, without more details of that scheme I am not able to conclude that the Council has been inconsistent in its approach, bearing in mind that the specific circumstances of each proposal are likely to differ.

Conclusion

15. The Council has behaved unreasonably in refusing the planning application partly on the basis that the site is undesignated green space in the face of the clear evidence submitted with the planning application that the site was previously developed land. In the light of the Council's subsequent decision,

this position has directly caused the applicant unnecessary and wasted expense in the appeal process and merits a procedural award of costs.

16. The Council's failure to address the matter of its being unable to demonstrate a 5-year supply of deliverable housing sites when determining the application also amounts to unreasonable behaviour and directly caused the applicant to incur unnecessary and wasted expense in addressing this matter in the appeal. This merits a substantive award of costs.
17. However, I find that the Council did not behave unreasonably otherwise in respect of the other contentions made by the applicant. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting that part of the Council's reason for refusal relating to the loss of undesignated green space and in addressing the matter of the lack of a 5-year supply of deliverable housing sites, is justified.

Costs Order

18. 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 North Somerset Council shall pay to Ironamber Ltd. the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting that part of the Council's reason for refusal relating to the loss of an undesignated green space and in addressing the matter of the lack of a 5-year supply of deliverable housing sites.
19. 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.

Martin Small

INSPECTOR