
Costs Decision

Site visit made on 22 September 2020

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

**Costs application in relation to Appeal Ref: APP/D0121/W/20/3252190
The Timber Yard, Moor Lane, Clapton in Gordano, Nr Portishead, Somerset
BS20 7PT**

- 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 David Withers.
 - The appeal was against the refusal of planning permission for re-development of existing abandoned timber yard for residential use and erection of 4-no four-bedroom bungalows and associated garaging.
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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 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 costs regime is intended to support a well-functioning appeal system and encourage a proper use of the right of appeal. It is aimed at ensuring that all those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice, including in quality of case.
3. Costs will be awarded when the party against whom the award is sought has behaved unreasonably; and the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. In this costs application, the Council contends that the appellant's unreasonable behaviour has been substantive in relation to the merits of the appeal. Namely that the appellant has pursued a clear 'no hope' case. I agree.
5. Indeed, matters relating to insufficient information in relation to flood risk and biodiversity (protected species and trees), as well as pertaining to the inadequacy of the access were not only raised by the Council during the application, they had informed the reasons why a previous Inspector dismissed an appeal in 2018 (Ref APP/D0121/W/17/3188813). The associated costs decision to that appeal clearly stated that the inadequate quality of survey information relating to flood risk and the lack of any ecological or arboricultural survey information were 'significant failings' and 'to pursue an appeal without providing such information constitutes unreasonable behaviour'. And yet, the

appellant has pursued this appeal without providing adequate survey information.

6. Furthermore, the shortcomings of the site's access and location are still in play. The issues with the site's access had been raised not just by the previous Inspector but by another who dismissed an appeal at the same site in 2000 (APP/D0121/A/00/1049480).
7. However, while the appellant may have been compelled to pursue an appeal on the basis of new policy arguments or the Council's current housing land supply position, there is no persuasive reason why the appellant pursued the current scheme, and subsequent appeal, without having resolved to provide the necessary quality of surveys or assessment information that was evidently lacking in previous iterations. Whether or not the appellant is a lay-person, the case has been very clearly and consistently made that the lack of critical supporting information or material changes to the site's access, the development proposal would plainly be in conflict with the development plan and national policy. To pursue a case still so clearly lacking in these regards, in my judgement, amounts to unreasonable behaviour.
8. In order for an application for costs to succeed, unreasonable behaviour must also have resulted in unnecessary or wasted expense. In this instance, the appellant's unreasonable behaviour has directly led to the Council incurring the unnecessary expense of resisting the appeal and defending its decision.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

H Porter

INSPECTOR

Costs Order

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 David Withers 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.

The applicant is now invited to submit to Mr David Withers, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount

H Porter INSPECTOR