
Costs Decisions

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 November 2020

Costs application in relation to Appeal A: APP/R3325/W/20/3247647 Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- 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 Castle Cary (BMI) Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage
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Costs application in relation to Appeal B: APP/R3325/Y/20/3247652 Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Castle Cary (BMI) Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against a refusal of the local planning authority to listed building consent for works described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure.
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Decisions

1. The application for an award of costs in relation to Appeal A is allowed in the terms set out below.
2. The application for an award of costs in relation to Appeal B is allowed in the terms set out below.

Procedural Matters

3. The applications were made jointly. In this regard I have considered the application on the basis that it necessarily comprises 2 component parts, in respect of Appeal A and Appeal B respectively.
4. I have not received a response to the above applications from the Council. I have therefore considered the applications against the evidence otherwise set before me by the Council.

Reasons

5. 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.
6. The applicant claims that the Council acted unreasonably in relation to both appeals on broad substantive grounds, which I define principally as:
 - (a) preventing or delaying development/works which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - (b) failure to produce evidence to substantiate each reason for refusal on appeal; and
 - (c) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

Unreasonable behaviour: Appeal A

7. The application subject of Appeal A was refused partly on the basis of its effect on the spatial hierarchy set out in Policy SS1 of the South Somerset Local Plan 2006-2028 (the Local Plan). This was due to exceedance of the 'housing delivery target' for Ansford/Castle Cary set out in Policy SS5 of the Local Plan. However, Policy SS5 sets out minimum housing numbers, not maximum targets. Policy SS5 otherwise places emphasis on achieving an appropriate distribution of housing across the hierarchy.
8. In this context, the Council referred to the number of dwellings for which planning permission had already been granted the Council, but presented failed to explicitly explain, identify or evidence the harm that would arise due to further exceedance of the housing number identified for Ansford/Castle Cary. This was despite submission of evidence by the appellant which showed that the relative position of Castle Carey within the hierarchy would be sustained, As the Council has failed to demonstrate the existence or nature of harm, or indeed therefore the existence of clear conflict with the Local Policies cited, I find that it acted unreasonably with regard to ground (c) above.
9. The application subject of Appeal A was additionally refused on the basis of inadequate parking provision. This was contrary to the view of the Highways Authority (HA), whose guidance is employed by the Council, and cross referenced by Policy TA6 of the Local Plan. The Council was clearly entitled to take a contrary view. However, in seeking to justify its approach, the Council inaccurately cited the relevant figures. In this regard the optimum standard, the level of proposed provision, and level of shortfall against the optimum standard, were all incorrect, and therefore misrepresented. The Council additionally failed to engage with the census-based data upon which the HA's views were based. Whilst the Council's claim that harm would arise in relation to highways safety due to overspill parking therefore lacked any factual basis, the Council additionally failed to explain where the claimed harm would arise. Consequently, I again find that the Council acted unreasonably with regard to ground (c) above.
10. I have therefore found that in relation to both reasons for refusal of planning permission, the Council made vague, generalised and inaccurate assertions about the proposal's impact, which were unsupported by any objective

analysis. Consequently, the Council failed to demonstrate that the scheme in fact conflicts with the Local Plan, or therefore that its refusal of planning permission was justified.

11. With regard to ground (a), it is clear that the Council would have granted planning permission in the absence of concerns relating to the settlement hierarchy and parking. This was indeed the officer recommendation. On this basis, and in view of my findings above, I therefore find that the Council acted unreasonably in refusing planning permission. This is notwithstanding the fact that I am dismissing Appeal A, given that my reasons for doing so differ from those of the Council.

Unreasonable behaviour: Appeal B

12. At appeal the Council has provided no amplification for its reason for refusal of listed building consent. Moreover, nowhere else within the Council's submissions, including its Committee Reports, is there any detailed analysis of impact. The Council has therefore provided no explanation of what form the alleged 'harm' would take in relation to the listed buildings on site. I therefore find that in these regards the Council acted unreasonably in relation to grounds (b) and (c).
13. The decision notice otherwise makes clear that listed building consent was refused on the basis that planning permission for conversion had been refused. In view of the fact that both applications should have been assessed in accordance with the duties set out in the Act, and the balancing exercises set out in paragraphs 195 and/or 196 of the National Planning Policy Framework, this reason does not appear to be wholly logical. It is otherwise unexplained, as noted above.
14. With regard to ground (a), it is clear that the Council would have granted listed building consent had it not refused planning permission. This was indeed the officer recommendation. On this basis, and in view of my findings in relation to Appeal A, I therefore find that the Council acted unreasonably in refusing listed building consent. This is notwithstanding the fact that I am dismissing Appeal B, given that my reasons for doing so again differ from those of the Council.

Expenses

15. It follows from my findings above that the expenses incurred by the applicant in the appeal process were unnecessary and/or wasted. Indeed, these wholly stem from refusal of both applications subject of Appeals A and B on grounds which the Council failed to properly and soundly justify, and which I have ultimately dismissed at appeal for other reasons.

Conclusions

16. For the reasons set out above, I find that the Council acted unreasonably on grounds (a) and (c) in relation to Appeal A, and grounds (a) – (c) in relation to Appeal B, causing the applicant to incur unnecessary and/or wasted expense in the appeal process. I conclude therefore that the applicant's full claim for costs in relation to both Appeal A and Appeal B must succeed.

Costs Orders

Appeal A

17. 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 Castle Cary (BMI) Ltd, 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.
18. 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.

Appeal B

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Somerset District Council shall pay to Castle Cary (BMI) Ltd, 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.
20. 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.

Benjamin Webb

INSPECTOR