



Costs Decision

Site visit made on 9 November 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2020

Costs application in relation to Appeal Ref: APP/W3330/W/20/3257876 Land at Beacon Road, Minehead.

- 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 Way for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for the erection of up to five new homes on land south of Beacon Road, Minehead.
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Decision

1. The application for an award of costs is refused.

Procedural Matter

2. I have treated the application as seeking a full award of costs based on the details and range of case made in the submissions.

Reasons

3. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. In summary, the applicant has explained that the Council has not carried out appropriately the application process and the requirements for ever more detailed assessment regarding issues that have already been determined as acceptable in principle has been inappropriate. The case is made that the acceptability of the site in principle was made through the Local Plan process with the site identified as suitable for development in the Strategic Housing Land Availability Assessment (SHLAA). This was followed by positive pre-application advice and therefore the site must be accepted as appropriate for development. It is argued that this has not been questioned through any of the stages simply the level of detail that is required.
5. Furthermore, the Council has not worked in a positive and proactive way as required by the National Planning Policy Framework to look for and agree solutions. The applicant considers that if the Council had been consistent then it would have granted planning permission.
6. In terms of the reasons for refusal, the Council would not have refused the application on ecological grounds and not raised issues with the lack of detail in the report if it had taken into account the missing pages that had been supplied

many months before the decision. If the Council had considered the professional report in its entirety the Council would have realised that the ecological issues had been addressed. This error led to unnecessary confusion and extra costs.

7. In terms of the other reason for refusal, the Council took many months to process the application and it appeared there was scope to resolve matters. The applicant commissioned reports as requested and this included a Heritage Impact Assessment which demonstrated that the impacts would be acceptable. However, the Council refused the proposal on this ground, ignoring the findings of the report and even incorrectly naming the Conservation Area. These are more examples of unreasonable behaviour.
8. The applicant considers that the Council should reimburse the costs if the appeal is dismissed because it would have misled the applicant regarding the suitability of the site. In the case that the appeal is allowed the costs should be paid for the wasted time and expense in having to prove the case at appeal.
9. The Council has responded to these points to say that the processing of the application took a considerable time because of the substantial local interest and the need to work through a series of issues. The requests for information reflect the validation requirements and to address key issues with the site. The effect of the proposal on heritage assets had been raised at the pre-application stage and the report was important, necessary and a normal request.
10. It is said that the Council made the agent fully aware of the view of the then Landscape and Biodiversity Officer in relation to perceived inadequacies with the ecological assessment and that it did not include surveys of various wildlife which are protected and that the site had potential habitats and/or foraging routes.
11. The Council dispute the assertion that the principle of the site had been agreed. It was highlighted in the SHLAA but a detailed assessment of the site's constraints and suitability for development had not been undertaken. The site was not allocated for development in the West Somerset Local Plan to 2032.
12. The Council believe that it did work positively to address concerns, however, there were fundamental issues with the proposal and the approach of the Council to refuse the application was not unreasonable for the two reasons set out.
13. In looking at these issues, the Guidance explains that all parties are expected to behave reasonably throughout the planning process although costs can only be awarded in relation to unnecessary and wasted expense at the appeal stage¹. I have noted the arguments of the applicant, however, these predominantly concern how the Council processed the proposal at the application stage rather than its conduct at the appeal stage.
14. The incorrect naming of the Conservation Area in the reason for refusal was unfortunate but did not lead to any material level of additional costs or wasted expense at the appeal stage. It was also unfortunate that it appears the Council used the older and incomplete version of the Ecological Impact Assessment as their basis for the reason for refusal. However, at the appeal

¹ Behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

the applicant referred to the existing and completed version to seek to address the reason for refusal and again this did not add any material level of costs. It will be seen that I consider that the issues regarding the potential effect on bats was well founded and this meant that the reason for refusal as a whole was not unreasonable.

15. In terms of the first reason for refusal, seeking information in the form of a technical report from an applicant does not require the decision maker to agree with the findings of the subsequent submissions. The Planning Report did reference the Heritage Impact Assessment and explained why it disagreed with the findings. Such issues are matters of judgement, based on technical information and assessments, and it will be seen that I agree with the Council on this matter.
16. Equally it will be seen from the decision that the identification of the site within the SHLAA was not determinative. Consequently while it is understandable that the applicant may place some weight on this matter, together with the pre-application advice, it does not prejudice the decision maker in assessing the proposal on its merits at the application stage.
17. Drawing all these matters together, the council provided satisfactory evidence at the appeal stage that justified to a sufficient extent the two reasons for refusal, although there was some inaccuracies in naming the wrong CA and with highlighting issues in the Ecological Impact Assessment.
18. As a result, it follows that in terms of the issues raised by the applicant in the costs claim that relate to the appeal process, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR