

Costs Decisions

Site visit made on 17 November 2020

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2021

**Costs application 1 in relation to Appeal Ref: APP/R3325/W/20/3256486
Land to the Southeast of Station Road, Station Road, Milborne Port, OS
367848, 119513**

- 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 & Mrs Hunt of Toft Hill LTD c/o Walker and Sons (Hauliers) LTD for a full award of costs against South Somerset Council.
 - The appeal was against the refusal of planning permission for an outline application for residential development for up to 30 dwellings, including access, with all other matters reserved, land to the south east of Station Road, Milborne Port.
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**Costs application 2 in relation to Appeal Ref: APP/R3325/W/20/3256496
Land to the Southeast of Station Road, Station Road, Milborne Port, OS
367848, 119513**

- 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 & Mrs Hunt of Toft Hill LTD c/o Walker and Sons (Hauliers) LTD for a full award of costs against South Somerset Council.
 - The appeal was against the refusal of planning permission for an outline application for residential development for up to 10 dwellings, including access, with all other matters reserved, land to the south east of Station Road, Milborne Port.
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Decision

1. Costs Application 1. The application for an award of costs is allowed in the terms set out below.
2. Costs Application 2. The application for an award of costs is allowed in the terms set out below.

Procedural matters

3. For consistency, the address and descriptions of the proposals in the banner headings above are as stated in the Decisions for both appeals.
4. Following response from the Council to the original applications for costs, the applicant raised additional reasons for seeking awards of costs. The applicant states that they were unaware of the issues until such point as the Council provided their appeal statements, after the original costs applications had been submitted. Therefore, the Council were asked to comment on the additional matters raised and no comments were received in response.

Reasons

5. The Planning Practice Guidance (PPG) 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. In both applications, the applicant contends that the Council have acted unreasonably in two ways. Firstly, that the Council's reason for refusal on highways grounds related to a previous design iteration rather than that which was before them. Secondly, that the Council's position regarding the effect of development proposals on the Somerset Levels and Moors Ramsar site was unbeknown to the applicant until the appeal stage. In addition to this, in relation to Costs application 1, the applicant considers the Council's position on local education capacity to have been unfounded.

Highways matters

7. The Council acknowledge that their reason for refusal regarding highway safety was based on a design relating to a previously proposed highways arrangement, which incorporated carriageway widening into existing verge on the northern side of Station Road. Notwithstanding that the Council were seeking to expedite a decision and that the Highways Authority are a statutory consultee rather than decisionmaker, this is unreasonable behaviour as the carriageway widening referred to in their reasoning was not part of the proposals.
8. Similarly, that the Council would have objected on other highway safety grounds and the Highway Authority raised other safety concerns as part of the appeal does not overcome this issue. Highway safety relates to a myriad of different matters and the applicant has been required to respond accordingly, including the provision of detail to demonstrate that no carriageway widening was proposed and it would appear associated legal advice has also been sought on the matter. Therefore, some costs associated with the error of the Council have unnecessarily been incurred.

Somerset Levels and Moors RAMSAR site

9. During the appeal process, the Council highlighted a recent letter from Natural England regarding development proposals in the catchment area of the Somerset Levels and Moors Ramsar site. The Council were in my view obliged to make me, as the appropriate decision maker aware of the letter, this was not unreasonable. The appellant had opportunity to respond on the matter however did not do so in any substantive detail. Also, given my findings on the main issues I did not consider this position further. Therefore, in my view no costs are considered to have been unnecessarily incurred in this respect.

Local education provision

10. The applicant contends that the Local Education Authority's (LEA) views were not reflected in the reason for refusal and that they did not object to the proposal. However, the LEA is a statutory consultee. The Council as decision maker considered the evidence before them at the time of the decision. Subsequently the LEA provided an appeal supporting statement which the appellant responded to. The provision of a statement by a consultee inevitably meant that the appellant would have to deal with the matters raised. The production of the LEA statement does not amount to unreasonable behaviour on the part of the Council and no unnecessary costs have been incurred in that respect.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated with regard to the scope of highway works, and that a partial award of costs is justified in both applications.

Costs Order

12. 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 Council shall pay to Toft Hill LTD c/o Walker and Sons (Hauliers) LTD, the costs of the appeal proceedings described in the heading of this decision; limited to those costs incurred in contesting the first Council refusal reason concerning highway safety as a result of carriageway widening, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

M Scriven

INSPECTOR