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## Costs Decision

Site visit made on 3 February 2021

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 March 2021**

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### **Costs application in relation to Appeal Ref: APP/F0114/W/20/3260800 Land north east of Deadmill Lane, Lower Swainswick, Bath, BA1 8NE.**

- 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 Bath & North East Somerset Council for a full award of costs against Mr Millen.
  - The appeal was against the refusal of planning permission for the construction of 18 affordable dwellings.
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### **Decision**

1. The application is granted in the terms set out below.

### **Reasons**

2. The Government's Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG also advises that before making any appeal the party seeking permission should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain permission.
4. The appellant is experienced in planning matters and it is reasonable to assume he was familiar with the above noted Guidance, as well as the Planning Inspectorate's guidance on appeal procedures and the Wheatcroft principles. Whilst it is not uncommon for appellants to submit amended plans at appeal stage, unless the revisions are so minor that they would not prejudice the interests of any party there is a risk that they may not be taken into account.
5. In this instance, the planning officer's report notes that there were 196 objections at the application stage. Many of these raised highway matters. For whatever reason, it appears that the appellant did not re-engage with the Council before submitting these amendments and chose not to notify interested parties of the revised plans. Whilst some of the amendments amount to minor technical details others, such as the proposed pedestrian link and the deletion of the controlled crossings, were more significant.
6. In effect, the appellant was attempting to evolve the scheme through the appeal process and acted unreasonably by submitting amended plans for the Council to comment upon, but without any mechanism in place for consulting interested parties. The appellant failed to limit the risk of these plans not being taken into account by the Inspector and expense being incurred by the Council.

7. Within the appeal decision, I found that if I had taken the amended plans into account it would have deprived those who should have been consulted on the changes with the opportunity of commenting upon them. The Council, in responding to the amended highway plans/details, therefore incurred wasted expense. It should therefore be entitled to recover the costs incurred in responding to these amended plans/details. I estimate this to be those incurred in producing about a third of the Highway Engineer's Statement.
8. Other plans and additional details submitted by the appellant, including the Arboricultural Impact Assessment Tree Protection and Landscaping Plan, were largely indicative and substantiated other parts of the appellant's argument. In any event, landscaping was a reserved matter. Moreover, the proposal, by its very nature, was always going to be accompanied by a planning obligation, which would require consideration by the Council. It was not unreasonable therefore for a Unilateral Undertaking (UU) to be submitted in support of the appeal. There must have been a reasonable expectation by the Council that it would need to consider and comment upon a UU as part of the appeal process.
9. It is unfortunate that the draft UU sent to the Council contained some obvious errors and that an e-mail inviting the appellant to enter into discussions regarding this document does not appear to have been received. However, there is nothing of substance to support the claim that the appellant behaved unreasonably in submitting the UU (including the draft) and that this caused the Council to incur unnecessary or wasted expense.
10. Given all of the above, I conclude that the appellant's unreasonable behaviour regarding the submission of amended highway plans/details and the wasted expense incurred by the Council in this matter justifies a partial award of costs.

### **Costs Order**

11. 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 Millen shall pay to Bath & North East Somerset Council the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the Council in responding to the amended highway plans/details that were submitted as part of the appeal.
12. The Council is now invited to submit to Mr Millen, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

*Neil Pope*

Inspector