

Costs Decisions

Hearing Held on 23 March 2021

Site visit made on 24 March 2021

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2021

Costs application 1 in relation to Appeal Ref: APP/F0114/W/20/3256285 Site of former Ministry of Defence Offices, Warminster Road, Bathwick, Bath

- 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 partial award of costs against Hardrock Developments LTD.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of 42no. new dwellings and 2no. new blocks of apartments to provide a total of 70 new homes on part of the former MOD site at Warminster Road (revision to consented development).
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Costs application 2 in relation to Appeal Ref: APP/F0114/W/20/3256292 Additional Development Area, Holburne Park, Bathwick, Bath

- 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 partial award of costs against Hardrock Developments LTD.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 8 additional dwellings, landscaping, car parking and associated works on land adjacent to Holburne Park, Warminster Road, Bath.
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Decision

1. Both applications for costs are refused.

The submissions for Bath and North East Somerset Council

2. The applicant is of the view that Hardrock Developments have demonstrated unreasonable behaviour in the appeal process further to the late submission of new evidence, incurring unnecessary costs as result.

The response by Hardrock Developments LTD

3. The respondent considers that the information was necessary so as to provide an up to date appraisal of the viability of the appeal proposals.

Reasons

4. The applications for costs relate to two linked appeals that were considered collectively in agreement of the main parties.
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. The COVID-19 pandemic has, unquestionably, caused delays in the planning system, and the determination of this appeal has unfortunately not escaped that. As a consequence, many of the statements submitted by both parties for the appeals were dated, and it was not unreasonable of either party to want to seek to update them. It is important that I as decision-maker had the most up to date information before me to determine the appeals. The Council also submitted updated information regarding their assessment of the property market since the time of their decision as part of their appeal statement. In my view the submission of updated viability information and associated evidence of the respondent's view of the effect of COVID-19 on the housing market was therefore reasonable as part of the appeal process.
7. Notwithstanding that the updated information was understood to only be available close to the time of Hearing, in my view the timing of the late submission of information at the time of the Hearing was unreasonable. It would clearly have been far more helpful had the information been submitted further in advance of the Hearing. However, I have no reason to consider that the costs incurred by the Council in responding to the late evidence would have been any different to that which would have been incurred had the respondent submitted the material earlier in advance of the Hearing.
8. Therefore, I do not find that unreasonable behaviour from the respondent, as described in the PPG has resulted in any unnecessary expense in terms of the preparation and submission of the relevant appeals.
9. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

M Scriven

INSPECTOR