



Costs Decision

Site visit made on 12 April 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2021

Costs application in relation to Appeal Ref: APP/R3325/W/20/3265313 Land adjacent to Englands Mead, Queen Camel, Yeovil BA22 7NW

- 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 John Ryall for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for 9 dwellings with access and landscape planting provision.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. It is contended that, by not following their Officers' advice, the Council prevented development that should have been approved in May 2020. Furthermore, it is argued that the Council has not defended one aspect of its reason for refusal, and has failed to provide cogent evidence in respect of the other element. Moreover, it is alleged that, in introducing new reasons relating to the change in circumstances since the original decision, the Council has not correctly applied local and national policies.
4. The decision of the Council's Members to depart from the advice of its Planning Officers does not, of itself, amount to unreasonable behaviour. However, the PPG advises that a Council will be at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal. In this case, there was a single reason for refusal, but it encompassed two distinct issues. The second of these issues related to the accessibility by foot to local services. The decision notice expressly referred to the lack of a continuous dedicated footway from the site to the village centre.
5. In its appeal statement, however, the Council concluded that, on review, there is a continuous safe pedestrian access to the village services from the entrance to the site. Consequently, it conceded that this element of the Planning Committee's reason for refusal could not be justified, and would no longer be contested. However, by this stage, the applicant had already incurred the unnecessary expense of engaging professional representation to provide evidence to support his appeal on this ground. The inclusion of this issue within

- the reason for refusal was, therefore, unreasonable, and led to wasted expense on the part of the applicant.
6. The other strand of the reason for refusal was that the proposed development related poorly to the existing built form by reason of its siting, scale, layout, and design. In my decision on the appeal, I concluded that this would not be the case, as the development would draw on many of the characteristics of the adjacent housing. Whilst the Council sought to defend this element of the refusal, it did not produce any substantial evidence in support of its case.
 7. The PPG advises that Councils will be at risk of an award of costs if they make vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The Council's statement contained four sentences relating to the matter, concluding that the alignment of Plots 3 and 4 "*could be considered slightly discordant with the existing built form that could be deemed contrary to the character of the area*". No objective analysis was provided to demonstrate how this slight discordance would result in harm to the character or appearance of the area, or how it would depart from local or national advice on well-designed places.
 8. The Council has, therefore, failed to provide substantial evidence to support either of the strands of its only reason for refusal. At the time it made its decision, these were the only reasons that the Council identified for preventing the development from proceeding. The PPG identifies that preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, is one of the circumstances that may lead to an award of costs against a Council.
 9. There was a significant period between the Members' decision to refuse the application, and the preparation of the Council's appeal statement. During that time, there were significant changes in circumstances, surrounding the Council's ability to demonstrate a 5-year supply of housing land, and progress on the Queen Camel Neighbourhood Plan. My determination of the appeal had to be based on the circumstances that prevailed at the time of my decision, rather than at the time the Council determined the application. It was not, therefore, unreasonable for the Council to provide evidence relating to these changed circumstances in its appeal statement. I concluded that the policy issues raised, regarding the location and mix of housing, were determining factors in the appeal, in the light of the altered circumstances.
 10. Nevertheless, the fact remains that, at the time the Council refused the application, circumstances were different. It conceded that one of the reasons could not be contested, and failed to provide cogent evidence in support of the other. The reasons for refusal were, therefore, unreasonable, and prevented development that should, otherwise, have been permitted at the time. The applicant was therefore put to the unnecessary expense of pursuing an appeal.

Conclusion

11. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and that a full award of costs is justified.

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 District Council shall pay to Mr John Ryall, 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.
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.

Nick Davies

INSPECTOR