

Costs Decision

Hearing Held on 3 August 2021

Site visit made on 5 August 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Costs application in relation to Appeal Ref: APP/W3330/W/21/3272670 Land off Shurton Lane, Stogursey, TA5 1RW

- 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 Land Allocation Ltd for a full award of costs against West Somerset and Taunton Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline application with all matters reserved except for access for a residential development of up to 27 No. dwellings (resubmission of 3/32/19/011).
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Decision

1. The application for costs is allowed in the terms set out.

The submissions for Land Allocation Ltd

2. The appeal was originally to be determined under the written representations procedure. Following receipt of the Council's Statement, it became apparent that the Council was seeking to claim that a five year housing land supply existed (5YHLS), despite the earlier appeal decision of 29 March 2021¹ indicating that the Council was incapable of demonstrating a five year supply of housing land.
3. At the time a change in procedure became necessary, the applicant indicated that this would likely lead to a submission of a claim for costs from the Council, owing to the lack of account on the part of the Council of the earlier appeal decision and lack of justification in support of its case on the matter of the 5YHLS.
4. The applicant highlights the Council's failure to provide the documents requested, i.e. planning permission decisions (refs 3/37/20/006 and 3/21/21/015) and the Strategic Housing Land Availability Assessment (SHLAA), which were not forthcoming within the requested deadlines. In fact, at the time of the submission of the Council's Statement, neither permissions had actually been granted even though positive Committee recommendations may have been reached.
5. The summary of the applicant's position is that the Council have acted unreasonably and incurred unnecessary and wasted expense through the escalation of the case to an informal hearing through a failure to provide information, vague references which led to a change in the appeal procedure, relying on information which was inaccurate and persisting in concluding a

¹ Ref APP/W3330/W/19/3243508

5YHLS could be demonstrated when an Inspector had reached pertinent conclusions in a materially relevant decision only a matter of months prior to the hearing.

The response by Somerset West and Taunton Council

6. The response by the Council was made in writing on the day of the closure of the hearing. The applicant was provided with an opportunity to comment on the Council's rebuttal.
7. Essentially, the Council's response highlights the importance of the development plan as the starting point for consideration of the appeal proposal and the non-compliance of the proposal therewith. The response also highlights the relevant extracts of the earlier appeal decision which indicates that the 5YHLS position was based on the evidence before my colleague at that time in relation to that particular appeal, some four months prior to the date of the hearing.
8. The summary position of the Council is that it considered that circumstances had materially changed between the time of the earlier decision and the consideration of the appeal proposal which led to its defence of the case prior to and during the hearing.

Reasons

9. The Planning Practice Guidance 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.
10. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
11. In terms of the procedural aspects, the Council did not provide some requested documentation on request within a specified deadline, even when that deadline was subsequently extended. This led to a degree of uncertainty about the appropriate method of determining the appeal and inability to prepare fully for the hearing when the case had been escalated to be determined as such. Further, despite the ability to be sufficiently clear about reliance on a 'permission' to advance an argument on a 5YHLS, the Council presented inaccurate information alleging that such permissions had been granted when in fact, at that time, those permissions had not been granted. The Council's case provided scant detail about the evidence on which it relied to substantiate a change in circumstances between the earlier appeal decision and the hearing, which through its vague submissions, became necessary.
12. In terms of the substantive matters, the Council defended the 5YHLS position when it was found incapable of doing so by an Inspector only four months prior to the hearing. The appeal decision was agreed as being a significant relevant material consideration by both parties in the Statement of Common Ground and includes reference to the 'absence of extant planning permissions' and the definition of deliverable in the National Planning Policy Framework, which prevent the inclusion of a substantial number of homes in the housing supply calculation. As the Council again sought to promote the inclusion of a number of sites which do not yet have extant permissions, the substantive merits of the case were partially flawed and resulted in wasted time and expense.

Conclusion

13. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. 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 Somerset West and Taunton Council shall pay to Land Allocations Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from the date of 17 June 2021 in respect of determination of the appeal by way of informal hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. Land Allocations Ltd is now invited to submit to Somerset West and Taunton 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.

Hollie Nicholls

INSPECTOR