
Costs Decision

Site visit made on 1 December 2021

by Mrs H Porter BA(Hons), MSc PGDip, IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th January 2022

Costs application in relation to Appeal Ref: APP/R3325/W/20/3264973 Land Adjacent to Lovington Primary School, Lovington BA7 7PY

- 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 Justin Trott for a full award of costs against South Somerset District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 9 dwellings and associated infrastructure works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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. Unreasonable behaviour can either be substantive (relating to the merits of the appeal) or procedural (relating to the process).
3. Cost applications may relate to events before the appeal. However, awards cannot extend to compensation for indirect losses, such as those that may result from alleged delay in obtaining planning permission¹.
4. The applicant submits that the Council acted unreasonably in failing to determine the application in an acceptable timescale, causing new issues to arise and the 5-year housing land supply position to shift in the meantime, thereby increasing costs of the proposed development and ultimately preventing it.
5. The Council's target date for determining the application was 11 April 2019 and, ostensibly, a formal extension of time was not requested until May 2020. The Council's rebuttal includes listed communications with the applicant after the determination date, along with continued submission of supplementary reports, appointment of external consultants and meetings. I do not know why an external landscape consultant was appointed so late in the application proceedings. However, it is evident that the Council did engage proactively with the applicant while giving due consideration to matters such as landscape, archaeology, and heritage.

¹ PPG Paragraph: 032 Reference ID: 16-032-20140306

6. I note that engagement on the part of the Council became more sporadic, prompting the appeal against its non-determination; I appreciate the applicant's frustration in this regard. However, there appears to be a correlation between the lockdown restrictions and problems at the Council, which, in my view, were outside its control.
7. In this case, I have dismissed the appeal and not granted planning permission for the development. It cannot be said that the Council's behaviour delayed development that was in accordance with development plan or national policy. Rather, the site is located where various sensitive issues are at play that the Council was evidently assessing. There were no firm assurances that the Council had been satisfied that the proposal was in accordance with the development plan no that it was minded to allow the proposed development. Thus, an appeal would not necessarily have been avoided had the application been determined in a timelier way.
8. There are also no guarantees that the issue of phosphates or a changed land supply would not have emerged, and needed to be considered, during the course of an appeal. That the Council did not send its appeal questionnaire within the timescales is regrettable; however, I cannot see that this resulted in unnecessary or wasted expense in this appeal.

Conclusion

9. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mrs H Porter

INSPECTOR