
Costs Decision

Hearing Held on 8 March 2022

Site visit made on 9 March 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2022

Costs application A in relation to Appeal Ref: APP/P1133/W/21/3283080 Bovey Tracey Hospital, Mary Street, Bovey Tracey TQ13 9HE

- 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 h2Land Ltd for a full award of costs against Teignbridge District Council.
 - The hearing was in connection with an appeal against the refusal of for demolition of existing hospital and construction of 4 Self & Custom Build dwellings.
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Costs application B in relation to Appeal Ref: APP/P1133/W/21/3283080 Bovey Tracey Hospital, Mary Street, Bovey Tracey TQ13 9HE

- 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 Teignbridge District Council for a partial award of costs against h2Land Ltd.
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Decisions

1. Costs application A – The application for costs is refused.
2. Costs application B – The application for partial costs is refused.

Background

3. 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.

Application A Reasons

4. The applicant alleges that the Council's data in respect of self/custom build housing permissions is incorrect. This argument also formed a main part of the applicant's case in support of the appeal. The applicant also argues that the Council has unreasonably refused permission on heritage grounds, adding a further impact in relation to the Bovey Stone at a late stage and which was not cited in the reason for refusal. A similar criticism is levelled at the Council in relation to numerous other design-related aspects which were not fully detailed in the reason for refusal. Lastly, the applicant also claims that the Council has unreasonably refused permission on drainage grounds when the use of planning conditions could have made the development acceptable.
5. In relation to the self/custom build falsified data claim by the applicant, I do not consider that the Council has behaved unreasonably. As is clear from the Decision, I do not consider that this aspect of the proposal is capable of attracting weight in the overall balance and, as such, there is no need to

- interrogate the differences between the parties on the data collection methods or overall need figures. The time that the applicant chose to spend on this matter was at its discretion and in some cases, it does appear that late requests were made to the Council for large quantities of information.
6. I have considered the matter of whether the Council has raised heritage and other design-related criticisms at a late stage because the reason for refusal omits explicit reference to every aspect detailed in the Statement or discussed at the hearing. In my view, and as clarified by the Council at the hearing, the second reason for refusal relates to the impact on the streetscene 'and' the harm to the settings of various heritage assets. The reason is not exclusively related to heritage harm and the Council explain more fully the design-related issues with the scheme in its Officer Report and Statement of Case. The fuller explanation of the anticipated harm in these regards does not amount to 'moving the goalposts' and is not unreasonable even if a particular consultee does not offer a written objection upon which the refusal reason is based.
 7. I do find there to be a minor degree of inconsistency in relation to the perceived impacts on the Bovey Stone, which whilst raised as a potential harm in the Officer Report, is then referred to as a perceived 'less than substantial' harm in the Council's Statement of Case. This was unhelpful of the Council. However, I note that the Heritage Statement submitted by the applicant addressed the matter of the impact on the setting of the Bovey Stone, and given the number of affected heritage assets, the additional time to assess this asset and discuss it as part of the hearing was relatively minimal.
 8. In terms of the matter of drainage, it appears that much reliance is being placed on the previously developed nature of the site to justify a limited interrogation of its drainage capability, particularly when the positioning of buildings and the drainage regime would be very different. Whilst conditions can be used to seek additional details, the nature of the outline scheme with fixed scale and layout leaves little flexibility as to how to approach the drainage solution and could render a scheme unworkable. Consequently, the relatively basic infiltration testing information and high-level drainage scheme is not an unreasonable request on the part of the Council to enable a planning condition to be imposed. I also note the offers from the Council to work with the appellant on this issue in the period prior to the hearing.
 9. In conclusion, it does not appear that the costs application relates to any unreasonable behaviour by the Council in relation to the substance or its handling of the appeal application or appeal itself, and nor does it appear to me that an award of costs would be justified in either regard.

Application B Reasons

10. The Council's partial claim for costs is sought specifically in relation to officer time spent on revising the list of conditions that the appellant previously agreed as part of the Statement of Common Ground (SoCG) received ahead of the hearing. During the hearing discussion on the conditions, the appellant did highlight that some of those drafted would need to be tweaked in the context of the intention to allow a self/custom build development in a more organic manner than if it were being built out by a single contractor. I opted to provide a date by which a revised list of conditions could be provided after the hearing and the parties agreed to this timeframe.

11. The applicant's response is that the Council has overlooked the very nature of the scheme in drafting the conditions, but ultimately the changes requested are minor in nature. It is also suggested that no additional costs have been incurred by the Council in the course of agreeing these minor changes.
12. Ultimately, I agree with the Council that the agreement of the conditions was part of the process of agreeing the SoCG. The applicant knowingly agreed the SoCG and then decided that further revisions, however minor, were needed to suit the nature of the scheme. This does seem a bit remiss.
13. Nevertheless, the changes that have actually come from this exchange of post-hearing correspondence have been very minimal and cannot have incurred much time on the part of the Council, even if that time was incurred wastefully.
14. For the above reasons, whilst I consider that an unintentional act of the applicant has led to the Council incurring wasted officer time, and thus, expense, this is so minimal in the extreme, so as to not warrant an award of costs in its own right.
15. In conclusion, an award of costs as sought under Application B is not justified.

Hollie Nicholls

INSPECTOR