



Costs Decision

Inquiry Held 22 – 24 February and 1 and 3 March 2022

Site visit made on 7 March 2022

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th May 2022

Costs application in relation to Appeal Ref: APP/Q3305/W/21/3285335 Land at 366440 152493 Beauchamps Drive, Stratton on the Fosse, Somerset

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gleeson Strategic Land for a partial award of costs against Mendip District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the development of up to 75 dwellings with associated access and highway works, drainage and attenuation, open space, play area and landscaping (access to be determined, all other matters reserved).
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Decision

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

The submissions for the applicant

2. These were made in writing during the Inquiry¹

The response by the Council

3. This was made in writing during the Inquiry²

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the other party applying for costs to incur unnecessary or wasted expense in the appeal process. Awards against local planning authorities may be either procedural relating to the appeal process or substantive, relating to the planning merits of the appeal. The applicant is seeking a partial award of costs on procedural and substantive grounds.
5. With regards highways matters, the Council's reason for refusal was that insufficient information had been provided to demonstrate that the proposed development would not have an adverse impact on highway safety in the locality and/ or whether a satisfactory means of access to the site could be achieved. The Council accepted that the immediate site access was acceptable

¹ INQ15

² INQ21

- and no time was spent on this when the Inquiry sat. Instead, the focus was on matters associated with wider highways safety issues.
6. Whilst acknowledging the gap between the Council's decision in May 2021 and October 2021, from the evidence before me it is apparent that the Council did not review the information submitted by the applicant in October 2021 which sought to narrow the outstanding issues. Similarly, in January 2022 the Council did not accept the applicant's attempts to introduce drawing 20-212/003H which sought to narrow the issues in dispute at the Inquiry following the publication of the Council's statement of case in December 2021.
 7. The Council asserted that drawing 20-212/003H showed a substantially different scheme to that shown in drawing 20-212/003G. I disagree. From the information before me the amendments were to provide clarity to address the matters of ambiguity raised by the Council. Given the minor nature of the changes, in this case the submission of the information was not to evolve the scheme through a material redesign but to narrow outstanding matters.
 8. Access was a matter for determination as part of the planning application submitted as it was not a reserved matter. As such the Council needed to be satisfied that it had sufficient information to make a decision. However, the Council's decision not to engage with the applicant prevented a review of the information and their case after the appeal was lodged as part of sensible on-going case management. A more helpful approach could have led to the issues at the Inquiry being narrowed, reducing the expense associated with the appeal. The approach taken by the Council meant they made vague generalised assertions about the operation and safety of the network that were not substantiated during the Inquiry. The lack of co-operation from the Council means that they acted unreasonably in this regard and caused unnecessary expense.
 9. The Council identify that there was always going to be an Inquiry because of the other reasons for refusal and that highways would be a consideration given the points raised by interested parties. Be that as it may, if there had been ongoing discussion to narrow the issues highways may not have been a main matter and it may not have necessitated the need to hear from highways witnesses. The applicant's acknowledgement of the necessity for the Inquiry is reflected in their application for a partial award of costs related to the matters raised by the Council on highways issues.
 10. The Council criticise the applicants timing of the costs application and identify that they had not intended to submit an application either at the Case Management Conference or on the opening day of the Inquiry. However, it is open for the applicant to change their mind as the indication at those stages were given on a without prejudice basis. The intention to submit an application was identified after the highways witnesses had given their evidence and before the Inquiry concluded. I therefore disagree with the Council's perceived reasons of why the applicant chose to submit the application for costs when they did.

Conclusion

11. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been

demonstrated in part. Therefore, the application for an award of costs is partially allowed.

Costs Order

12. In the exercise of 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 of the enabling powers in that behalf, IT IS HEREBY ORDERED that Mendip District Council shall pay to Gleeson Strategic Land the costs of the appeal proceedings limited to those costs incurred in respect of preparing for and responding to matters related to highway safety matters raised by the Council. The applicant is now invited to submit to Mendip District Council, to whom a copy of this Decision has been sent, details of the costs with a view to reaching agreement as to the amount.

K Ford

INSPECTOR