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## Costs Decision

Site visit made on 30 August 2022

**by Alison Fish BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 October 2022**

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### **Costs application in relation to Appeal Ref: APP/Q3305/W/22/3296599 Land adjacent to Station Road, Wanstrow, Shepton Mallet BA4 4SZ**

- 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 B Dennett for a full award of costs against Mendip District Council.
  - The appeal was against the refusal of planning permission described on the appeal form as 'outline planning permission with some matters reserved for erection of 4 no. dwellinghouses with details of access and layout'.
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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 where a party has acted unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant's case for a full award of costs can be summarised as the Council failing to substantiate all three of its reasons for refusal through the appeal process. Furthermore, the Council failed to consider whether conditions may be applied (particularly in respect of reasons 2 and 3) to overcome the objections to the proposal.
4. The Planning Board refused the application contrary to officer advice. Whilst they are not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In defending their case, the Council have sought to rely on the published minutes of the Planning Board and some additional information contained in their letter dated 27 June 2022.
5. I have had sight of the Planning Board minutes but they offer very little insight into the Council's concerns around the location of the appeal site as set out in the first reason for refusal. The Council's letter dated 27 June 2022 includes two appeal decisions. These refer to sites elsewhere in the District but I have not been directed to anything which would suggest that the circumstances surrounding those appeals are directly comparable to those at the appeal site.
6. That said, the appeal proposal is at odds with the development plan and the Council have determined the application in accordance with the development

plan. The reason for refusal is complete and precise in identifying the Council's concerns. In addition, the Planning Board clearly identified harm in respect of drainage and land contamination. The reason for refusal shows that they considered the benefits of the proposal were limited and did not outweigh the harm. This is a planning judgment and I am satisfied that the Council were not unreasonable in refusing the application accordingly nor that they have failed to substantiate that reason.

7. With regards to reasons 2 and 3, the Council's consultees recommended that suitable conditions could be imposed to require further details to be submitted prior to work commencing on site. Those conditions appear in the list of conditions in the officer report and the minutes of the Planning Board indicate that Members were given additional advice by the Interim Head of Planning that both drainage and contaminated land could be adequately addressed by conditions.
8. I accept that it may be desirable for the Council to have these details at outline stage. However, Council Officers were satisfied that it was not required at outline stage and could be adequately addressed by conditions. My findings in respect of the appeal concur with this. The evidence presented by the Council to clarify why they felt that conditions were not sufficient is scant.
9. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and it is on this basis that I find the Council acted unreasonably by not substantiating two of the three reasons for refusal.

### **Conclusion**

10. I therefore find that unreasonable behaviour by the Council, 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**

11. 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 the Council of Mendip District shall pay Mr B Dennett, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting reasons for refusal 2 and 3 only.
12. The applicant is now invited to submit to Mendip 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Alison Fish*

INSPECTOR