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## Costs Decision

Inquiry Held on 10 March 2021

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA**

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

**Decision date: 12 January 2023**

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### **Costs application in relation to Appeal Ref: APP/W3330/X/21/3278008 Land at Elms Farm, Forest Drove, Bickenhall, TAUNTON, TA3 6UE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Miss J Criddle, Mrs I Betzler & Miss F Criddle for a full award of costs against Somerset West and Taunton Council.
  - The hearing was in connection with an application for a Lawful Development Certificate for the proposed change of use of an agricultural building into one dwelling and amendment to a condition.
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### **Decision**

1. The application is refused.

### **The submissions for the applicant**

2. The application was made in writing prior to the hearing.

### **The response by Somerset West and Taunton Council**

3. The response was made in writing prior to the hearing.

### **Reasons**

4. 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.
5. I appreciate that it has been a frustrating time for the appellants. However, while the application for prior approval was made, and the Council has 56 days to respond, there is no obligation for it to respond. It did not respond in the 56 days, so the appellant did not require prior approval. That is not a failure on the Council's part with regard to the appellants.
6. Whether or not something is covered by prior approval is a matter for the appellants to decide. If they are not sure, they can use the LDC procedure, which they subsequently did. The fact that the Council indicated that it did not consider the development to be covered by prior approval was an opinion the Council could have, and it fairly indicated this to the appellants. The appellant could have ignored this if they were sure of their case but, in my view sensibly, they took the LDC route to make sure. There is no unreasonable behaviour and this is not a matter for a costs award against the Council.
7. The appellants also say the subsequent application to extend the time period was unnecessary. I agree it was unnecessary, but that is because the

development proposed and put forward for prior approval was not covered by that condition, as there was no prior approval to activate the condition. So again it was not the Council's unreasonable behaviour that required the application.

8. I appreciate the officer report for the prior approval used the wrong terminology in discussion of the matter, mentioning 'beyond reasonable doubt'. However, the Lawful Development Certificate is clear in the reason as to why it was refused. *'The Local Planning Authority considers that the evidence has not demonstrated on a balance of probabilities that the building was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.'* Clearly the correct test was applied. I understand that the Council wanted more information from the appellants, which the appellants did not have. However, it is not unreasonable for the Council to identify further information that would help its determination.
9. The choice of officer to deal with an application is up the Council, and in my experience a single officer very often deals with all the applications that come in on a particular site or area. This is not unreasonable.
10. The Council does not have to follow the appellants' legal advice. This was partly a matter of judgement, where parties can have a different opinion without it being unreasonable.
11. It is my view that this appeal could not have been avoided given the approach to the information available of the parties. Whilst I have not agreed with the Council's position, it was not an unreasonable stance to take.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full or partial award of costs is not justified.

*Graham Dudley*

**Planning Inspector**