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## Costs Decisions

Inquiry held on 21 to 24 February and 6 to 8 and 20 March 2023

Site visit made on 10 March 2023

**by O S Woodward BA(Hons.) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

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### **Costs application A: in relation to Appeal Ref: APP/Y3940/W/22/3308919 Land at Station Works, Station Road, Tisbury SP3 6QU**

- 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 Tisbury Community Homes for a full award of costs against Wiltshire Council.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of the Station Works site to provide a mixed development of up to 86 dwellings, a care home of up to 40 bedspaces with associated medical facilities, new pedestrian and vehicular access and traffic management works, a safeguarded area for any future rail improvements, and areas of public open space.
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### **Costs application B: in relation to Appeal Ref: APP/Y3940/W/22/3308919 Land at Station Works, Station Road, Tisbury SP3 6QU**

- 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 Tisbury Community Homes for a partial award of costs against Tisbury Parish Council.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of the Station Works site to provide a mixed development of up to 86 dwellings, a care home of up to 40 bedspaces with associated medical facilities, new pedestrian and vehicular access and traffic management works, a safeguarded area for any future rail improvements, and areas of public open space.
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### **Costs application C: in relation to Appeal Ref: APP/Y3940/W/22/3308919 Land at Station Works, Station Road, Tisbury SP3 6QU**

- 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 Wiltshire Council for a full award of costs against Tisbury Community Homes.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of the Station Works site to provide a mixed development of up to 86 dwellings, a care home of up to 40 bedspaces with associated medical facilities, new pedestrian and vehicular access and traffic management works, a safeguarded area for any future rail improvements, and areas of public open space.
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**Costs application D: in relation to Appeal Ref: APP/Y3940/W/22/3308919  
Land at Station Works, Station Road, Tisbury SP3 6QU**

- 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 Tisbury Parish Council for a full award of costs against Tisbury Community Homes.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of the Station Works site to provide a mixed development of up to 86 dwellings, a care home of up to 40 bedspaces with associated medical facilities, new pedestrian and vehicular access and traffic management works, a safeguarded area for any future rail improvements, and areas of public open space.
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**DECISIONS**

1. Application A – The application for award of costs is refused.
2. Application B – The application for award of costs is refused.
3. Application C – The application for award of costs is refused.
4. Application D - The application for award of costs is refused.

**BACKGROUND**

5. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.

**APPLICATION A**

**The submissions for Tisbury Community Homes**

6. An application for full costs for unreasonable behaviour was made in writing. The written submission provides full details of the claim but, in summary, the principal ground for the claim is that during the planning application the Council failed to engage constructively. This has given rise to unnecessary and wasted expense at the appeal, specifically with regard to: the Council taking nine months to respond on technical matters relating to highways and landscape; raising new issues regarding phosphate mitigation six months after submission; unreasonably requesting further community engagement; taking five months from payment of the fees to respond on viability; failure to meet with Tisbury Community Homes (TCH) to discuss the proposal; and, not attempting to resolve issues raised by the Environment Agency (EA) even when the EA was also refusing to constructively engage. A further ground is that the Council seeks a crossing over/under the railway line, which is not a requirement of policy or Network Rail.

**The response by Wiltshire Council**

7. This was provided in writing. In summary, the response is that TCH's application was deficient and it is their responsibility to provide the necessary

supporting evidence, TCH relied on the appeal process to develop their case and a full case was not submitted with the appeal, and that the Council by refusing to determine the application was being helpful because any decision would by necessity have been a refusal. With regard to engagement on highways, the Council did provide a response albeit delayed and TCH made no attempt to engage with the Council after receiving that response. With regard to engagement with the EA, the EA sent extensive correspondence to TCH and there is no requirement for them to meet in-person. With regard to phosphates, the requirement for a bespoke mitigation scheme was made in March 2022 six months before the appeal was lodged. With regard to viability, the Council advised TCH in advance that it would take significant time to review the viability assessment. The Council has not sought a bridge or tunnel over the railway line, merely that safe and appropriate access be provided in whatever form. The Council did not put forward a putative reason for refusal that there was insufficient public engagement.

## Reasons

8. The Council took an unreasonably long time to constructively respond on the technical matters relating to highways and landscape. However, by the time of the appeal process, the Council had provided its responses on the matters of highways and landscape and the remaining areas of dispute were clear, and were reasonable. The delays at application stage did not, therefore, lead to unnecessary or wasted expense at the appeal.
9. The requirement for a bespoke phosphate mitigation scheme was clarified early in the Inquiry process at the Case Management Conference in January 2023. Further evidence was therefore required by TCH on that topic, but I do not view this as unreasonable because it was necessary to respond to a reasonable objection to the proposal raised in a timely manner within the context of the appeal process.
10. The lack of community engagement was not a putative reason for refusal and was not relied upon in a material manner by the Council at the appeal. This topic was not, therefore, the subject of substantive evidence or meaningful resources or time in the lead-up to or at the Inquiry.
11. The viability position was not confirmed until during the appeal process and this is likely to be at least partly because of unreasonable delays caused by the Council during the course of the application. However, the Council engaged constructively with TCH during the course of the appeal and agreement was reached by the time the Statement of Common Ground was signed<sup>1</sup>. This topic was not, therefore, the subject of substantive evidence or meaningful resources or time in the lead-up to or at the Inquiry.
12. With regard to the EA, although there is no requirement to meet in-person, such a meeting would likely have been helpful to resolve issues, and the combination of this and the sometimes long time for written responses was unreasonable. However, the EA is not the Council and I do not hold the Council responsible for the actions, or inactions, of the EA. It could not reasonably be expected to respond in lieu of the EA on such specialist, technical matters. In addition, as can be seen from my decision, there are many legitimate matters of dispute regarding flooding and drainage in relation to the appeal proposal,

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<sup>1</sup> See Paragraph 8.6 of the Statement of Common Ground, dated 1 March 2023

which would likely have needed to have been discussed at the appeal in any event.

13. The Council did not specifically seek a crossing over the railway line and its objection was in relation to providing safe and appropriate access. As can be seen from my decision, this was a legitimate point of dispute in relation to the appeal proposal.

### **Conclusion**

14. Taking all of the above into account, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense by the appellant, as described in PPG, has not been demonstrated.

### **APPLICATION B**

#### **The submissions for Tisbury Community Homes**

15. An application for partial costs for unreasonable behaviour was made in writing. The written submission provides full details of the claim but, in summary, the ground for the claim is that Tisbury Parish Council (TPC) did not constructively engage with Tisbury Community Homes (TCH) during the course of the planning application and did not provide advice on how the proposal could be improved. This has given rise to unnecessary and wasted expense at the appeal, specifically with regard to: duplicating the Wiltshire Council witnesses on planning, design and highways; evidence beyond the putative Reasons for Refusal in relation to the Area of Outstanding Natural Beauty (AONB), traffic, need for the care home, and nature of the care home employment offer; late confirmation of witnesses and Proofs of Evidence; and, a failure to input into a Statement of Common Ground.

#### **The response by Tisbury Parish Council**

16. This was provided in writing. In summary, the response is that: TPC repeatedly engaged with TCH throughout the process. TPC is entitled to advance its own case and even if there is overlap with the Council's case this does not amount to duplication. TPC's evidence, whilst on the same topics, complimented the Council's evidence. TPC has kept to the agreed inquiry timetable and it was TCH's Counsel's availability that led to the delay in the second week of the inquiry. TPC was very flexible by agreeing to not be represented at all times by Counsel. The further areas of dispute raised by TPC beyond those by the Council were not unmeritorious and this is a reasonable approach. Although some witnesses were confirmed relatively late in the process, the areas of evidence TPC wished to cover were clear following the Case Management Conference. It is therefore unclear what delay or additional costs have arisen. A lack of a Statement of Common Ground did not impact on the Inquiry timetable.

### **Reasons**

17. TPC are entitled to raise different areas of dispute to the Council, as long as they are properly justified and supported in its evidence. In this regard, TPC's case regarding the AONB was reasonable because the appeal site is within the AONB and there was wider dispute regarding the design of the proposal which could, for obvious reasons, also affect the AONB. The evidence on traffic, need for the care home, and the care home employment offer was reasonable,

related to the proposal, and was made in the context of alleged conflicts with the Development Plan.

18. Where there was overlap with the Council's case, TPC's evidence largely did not duplicate the Council's position. Any small overlaps did not result in meaningful unnecessary or wasted expense by the appellant because they were responding to those points made in the Council's evidence in any event. At the Inquiry, TPC were careful to avoid unnecessary repetition or duplication of points raised by the Council.
19. TPC was not a signatory to the Statement of Common Ground. However, it submitted a detailed Statement of Case in December 2022 which clearly outlined its areas of dispute with TCH. It also attended the Case Management Conference in January 2023 where, again, it made clear to TCH the substance of its case. Overall, the issues raised by TPC were reasonable and they were presented in a timely manner. Therefore, although the presence of TPC at the Inquiry as a Rule 6 Party undoubtedly led to the process being longer and for more work to be undertaken by the appellant throughout the appeal process, this does not constitute grounds for the award of costs.

### **Conclusion**

20. Taking all of the above into account, I find that unreasonable behaviour by TPC resulting in unnecessary or wasted expense by the appellant, as described in PPG, has not been demonstrated.

### **APPLICATION C**

#### **The submissions for Wiltshire Council**

21. An application for full costs for unreasonable behaviour was made in writing with additional submissions made orally at the Inquiry. The written submission provides full details of the claim but, in summary, the grounds for the claim is that Tisbury Community Homes (TCH) provided insufficient detail to support the planning application, did not constructively engage with the Council during the application, and prematurely submitted the appeal. This has led to the submission of late evidence during the appeal, specifically: carriageway widths, swept path analysis, mobility issue assessment, and modelling data with regard to highways evidence; modelling, predicted flood levels and assessment of an alternative route to the south with regard to flooding evidence; viability evidence; phosphate mitigation which even in the appeal statement was still being claimed was not required and other ecological submissions; the Care Home Need Assessment (CHNA); and, the Design Principles Document (DPD). A further ground is that the proposal does not meet policy and could not reasonably be expected to succeed, particularly in relation to providing a pedestrian route from the appeal site to Tisbury. This has given rise to unnecessary and wasted expense at the appeal.

#### **The response by Tisbury Community Homes**

22. TCH provided an oral response at the Inquiry. It does not accept it is a premature appeal. The appeal was made in the context of 12 months of failure to determine the application by the Council. The Council indicated that the approach of using the Three Arch Bridge was acceptable in-principle at the pre-application stage. Even when the Council responded to the application it did not raise any of the points subsequently raised in its Proof of Evidence for the

appeal. The affordable housing element of the viability was the only remaining unsettled element prior to lodging the appeal. This was not agreed because it had taken 15 months for the Council to provide advice on viability. In the putative Reasons for Refusal, the Council suggested that the phosphates mitigation could be secured by Community Infrastructure Levy and it was only at the Case Management Conference that it was made clear that a bespoke phosphate mitigation scheme was required.

## **Reasons**

23. TCH submitted additional highways information, the DPD and the CHNA during the course of the appeal. It also submitted further technical information in relation to flooding. A bespoke phosphate mitigation response was submitted relatively late in the appeal process, which required consultation. However, the DPD and CHNA were submitted at the earliest stage possible after it became clear they would be necessary based on the putative reasons for refusal. Viability was subject to ongoing negotiation with the Council during the early part of the appeal process before reaching common ground. The technical information on highways and flooding was a reasonable response to requests for additional information that came during the course of the appeal process, either in the putative reasons for refusal or the Statements of Case.
24. The phosphate mitigation evidence was in response to ongoing dialogue with the Council about the expectations regarding bespoke mitigation and it was not unreasonable to attempt to find a solution even at a late stage in the process. It would not be reasonable to expect TCH to have committed to the phosphate mitigation scheme earlier in the process because even in its Statement of Case the Council had not finalised its requirements in this regard.

## **Conclusion**

25. Taking all of the above into account, I find that unreasonable behaviour by TCH resulting in unnecessary or wasted expense by the Council, as described in PPG, has not been demonstrated.

## **APPLICATION D**

### **The submissions for Tisbury Parish Council**

26. An application for full costs for unreasonable behaviour was made in writing with additional submissions made orally at the Inquiry. The written submission provides full details of the claim but, in summary, the grounds for the claim is that Tisbury Community Homes (TCH) provided insufficient detail to support the planning application and prematurely submitted the appeal. This has led to the submission of late evidence during the appeal, specifically: the phosphate mitigation scheme; transport evidence; the Care Home Need Assessment (CHNA); and, the Design Principles Document (DPD). This has given rise to unnecessary and wasted expense at the appeal, in particular because Mr Russell was a paid consultant regarding highways.

### **The response by Tisbury Community Homes**

27. TCH provided an oral response at the Inquiry. In the putative Reasons for Refusal, the Council suggested that the phosphates mitigation could be secured by Community Infrastructure Levy and it was only at the Case Management Conference that it was made clear that a bespoke phosphate mitigation scheme

was required. This explains the timing of that evidence. The requirement for a CHNA was not put forward in the Officer's Report and was only introduced by the Planning Committee. Providing it with the Proofs of Evidence was the next stage in the process. The narrative in the DPD follows the Design and Access Statement and it is therefore unclear what unnecessary or wasted expense this has caused to TPC. TPC did not need to commission specialist advice on this issue, for example. TCH's additional evidence on highways was in response to other evidence from the Council.

### **Reasons**

28. TCH submitted additional highways information, the DPD and the CHNA during the course of the appeal. A bespoke phosphate mitigation response was submitted relatively late in the appeal process, which required consultation. However, the submissions were in response to issues being raised by the Council or the EA, and were always provided in a timely manner following clarification of the scope of dispute by either the Council or the EA. Some of the evidence was submitted relatively late in the process, but it was an inevitable result of an appeal against non-determination where the putative reasons for refusal were not easy to predict when the appeal was lodged. And, where the areas of dispute were sometimes not clarified until during the appeal process, for example phosphate mitigation.
29. Therefore, whilst the additional information and evidence undoubtedly led to expense for TPC at the appeal, it was not unreasonable or wasted expense because it was in relation to justified and reasonable evidence, provided in a timely manner.

### **Conclusion**

30. Taking all of the above into account, I find that unreasonable behaviour by TCH resulting in unnecessary or wasted expense by TPC, as described in PPG, has not been demonstrated.

*O S Woodward*  
INSPECTOR