



Costs Decision

Site visit made on 31 October 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Costs application in relation to Appeal Ref: APP/W3330/W/22/3313793 Land at Munty Cottage, Churchstanton TA3 7RH

- 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 Messrs Jones & Clark for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal of planning permission for a proposed development described on the application form as, "Single self-build dwelling".

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

Housing Land Supply

3. The PPG details 2 ways in which a 5-year supply of deliverable housing sites can be demonstrated¹. Similarly, paragraph 75 of the National Planning Policy Framework (the Framework) details 2 methods to demonstrate the same.
4. The Council's Officer's Report refers to a Proof of Evidence² which was previously submitted as part of the evidence in relation to appeal decision Ref APP/W3330/W/22/3304839. The Council have not disputed the applicants' claim that this Proof of Evidence does not conform to the above-mentioned methods for demonstrating a 5-year supply of deliverable housing sites.
5. On this basis, although it has not been established that the figure given in the Proof of Evidence is inaccurate or without foundation, its usage at application stage to support the Council's stance that it could demonstrate a 5-year supply of deliverable housing sites was clearly at odds with the advice given in both the PPG and the Framework.
6. Moreover, the Inspector, in determining appeal decision Ref APP/W3330/W/22/3304839 did not issue a clear statement regarding the 5-year supply of deliverable housing sites position, meaning that this appeal decision does not lend support for the Council's use of the Proof of Evidence in determining the planning application for land at Munty Cottage.

¹ Paragraph 68-004-20190722

² Proof of Evidence of Ann Rhodes, BA Hons, PG Dip Arch Con., Senior Planning Policy Officer, Somerset West and Taunton Council. On Housing Need and Housing Land Supply.

7. Taking account of the case law referred to by the applicants³, although I follow the logic that the Council's behaviour could potentially have implications for consistency of decision-making, no substantive evidence has been provided to demonstrate that such implications have arisen in fact. Nevertheless, by not following the advice given in the PPG and the Framework referred to above, I consider that the Council acted unreasonably by not following the clear requirements of national planning policy with respect to how a 5-year supply of deliverable housing sites can be established.
8. However, as explained in detail in the associated appeal decision, the appeal site would not be a suitable location for new housing, with particular regard to the settlement strategy for the area and the accessibility of services and facilities, and the proposed development would have an unacceptable and harmful effect on the character and appearance of the area, and would not conserve the natural beauty of the Blackdown Hills Area of Outstanding Natural Beauty (AONB). The Framework provides at paragraph 176 that, amongst other things, great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
9. Considering this, even if the Council had considered at application stage that it lacked a 5-year supply of deliverable housing sites to the extent suggested by the applicants, given the harm identified to the AONB and the limited benefits of the proposed development, it would have been reasonable for the Council to find that either paragraph 11 d) i. of the Framework applied, or alternatively that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, as per paragraph 11 d) ii. of the Framework.
10. It follows that, even if the unreasonable behaviour identified above had not occurred, the Council would have had clear grounds to refuse the planning application in any event. An appeal and its associated costs (including seeking additional professional assistance) would then have been necessary for the applicants to seek a resolution to the dispute. Hence, no unnecessary or wasted expense in the appeal process has occurred.

Design Guide

11. The Council referred to its Design Guide⁴ under the heading 'Design of the proposal and impact on the character and appearance of the locality' in its Officer's Report, and provided reasoning which related to the key themes of that Design Guide. As such, I do not consider that the Council disregarded their own Design Guide. The Council's behaviour was not unreasonable in relation to this ground.

AONB

12. Whilst the Council's Landscape and Green Infrastructure Officer provided an opinion which stated 'No objection in principle', this Officer also stated that the proposal would conflict with the local plan. Their full opinion is repeated in the Council's Officer's Report with similar concerns being cited in the main body of that report. Furthermore, although the Council did not explicitly refer to the

³ *North Wiltshire DC v SSE* (1993) 65 P&CR 137, *R (Midcounties Co-Operative Limited) v Forest of Dean DC* [2017] EWHC 2050, *Baroness Cumberlege v SSCLG* [2017] EWHC 2057, *North Wiltshire DC v SSE & Clover* (1993) 65 P&CR 137

⁴ Design Guide: For a zero carbon, healthy, resilient and distinctive environment (adopted 2021)

submitted Landscape and Visual Impact Assessment⁵, the reasoning in the Council's Officer's Report with respect to the impact of the proposal on the AONB is cogent and is backed-up by descriptions of the landscape and built character of the AONB. I therefore consider that the Council did not make vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. The Council's behaviour was not unreasonable in relation to this ground.

Conclusion

13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Alexander O'Doherty

INSPECTOR

⁵ Landscape and Visual Impact Assessment (Steele Landscape Design) (2021)