



Costs Decision

Site visit made on 12 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Costs application in relation to Appeal Ref: APP/V3310/W/22/3313542 Land at OS GR 337743 132821, Back Lane, Middlezoy

- 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 Summerfield Homes for a full award of costs against Somerset Council.
 - The appeal was against the refusal of planning permission for erection of 26 dwellings, incidental open space, drainage, landscaping and associated infrastructure.
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Decision

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

Preliminary matters

2. While the decision on the planning application was made by Sedgemoor District Council, local government reorganisation means that the application for an award of costs is against the successor authority, Somerset Council.

Reasons

3. 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.
4. The application for a full award of costs was made in the context of no appeal statement having been submitted by the Council. I later accepted that statement, which clarifies the reason for refusal and gives further explanation of the Council's position. The costs application, nevertheless, also alleges unreasonable behaviour in that the Council's reason for refusal does not stand up to scrutiny.
5. In defence of the reason for refusal, the Council's statement gives clear reasons as to why an application for a Traffic Regulation Order (TRO) may not be successful. Accordingly, the alleged uncertainty in the TRO process noted in the reason for refusal has been logically and clearly explained.
6. However, the necessity of the TRO has not been fully substantiated by robust evidence. In its statement of case, the Council relies upon Local Highway Authority (LHA) comments from between 6 and 12 months before the planning committee date setting out what was required. By the time of the committee meeting, further comments had been provided from the LHA setting out its final position recommending approval to the proposal and the planning officer reported the LHA's view that a TRO was not required.

7. While a planning committee is not duty bound to follow the advice of its officers, no technical evidence has been provided by the Council since to support its position. Instead, somewhat vague assertions are made about possible effects of parked cars in the vicinity of the site and Main Road junction, and that vehicles may overrun the new markings. There is a lack of objective analysis or detailed evidence about parking behaviour and the latter is not a matter that would be prevented by the anticipated TRO in any event.
8. The Council's submissions about the Main Road junction are, largely, based upon the assertion that, without restrictions, it would continue to operate as it currently does. But that ignores the effects of the one-way, priority operation and there is no demonstration that any parking or speed restrictions are needed for that component to operate safely. The junction would not, therefore, continue to operate as it currently does.
9. The statutory consultee's clearly stated position, within the evidence, is that harm would not arise without a TRO. The Council suggests that the appellant's reliance on this is misplaced, particularly around the need to secure any passing place in perpetuity. However, this position avoids any analysis of the likelihood of parking obstructing the identified passing places, or within the visibility splays at the Main Road junction. A lack of detailed written explanation by the LHA as to why the TRO is not required is not in itself evidence of harm, which, in the face of the LHA's position, the Council must now demonstrate. Fundamentally, the LPA have relied upon an alleged lack of evidence for the TRO not being required, rather than providing robust evidence that harm would arise without it.
10. For these reasons, the reason for refusal has not been substantiated by objective analysis and does not stand up to scrutiny. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred. As this goes to the heart of the only reason for refusal, a full award of costs is therefore warranted.

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 Somerset Council shall pay to Summerfield Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Somerset 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.

M Bale

INSPECTOR