



Costs Decision

Hearing held on 11 June 2024

Site visit made on 11 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Costs application in relation to Appeal Ref: APP/W3330/W/23/3326347 Burrow View, Burrow Lane, Ashbrittle, Wellington, Somerset TA21 0JB

- 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 M Beard for a full award of costs against Somerset Council.
 - The appeal was against the refusal of planning permission for erection of agricultural workers dwelling without complying with a condition attached to planning permission Ref 01/89/006, dated 1 August 1990.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
3. The PPG states that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if they have behaved unreasonably from a procedural point of view. In summary, the applicant claims that the Council acted unreasonably in going against the advice of its professional officers without good reason and that there is no evidence to support or rationalise its reasons for refusing the application.
4. The Planning Officers report to committee clearly indicated that the property had been marketed since February 2021 (almost 2 years at the point the committee considered the proposal). It clearly demonstrated that the officer had: spoken with the estate agent about their marketing strategy; considered the number of agricultural workers dwellings applications approved in the area; considered the sales price of the appeal property against others for sale in the area noting the 30% reduction from the market value; and took into account a recent appeal decision. The officer concluded that the proposal had met the requirements of Policy H1A of the SADMP.
5. The Planning Committee were not duty bound to follow the advice of its professional officers. It is now common practice in a number of Council's that when such a situation occurs, the application is deferred so that the implications for the proposed decision can be considered. The fact that this did

not happen here is not in itself unreasonable behaviour. However, it could lead to unreasonable behaviour on substantive grounds if the Council fails to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

6. The Council's appeal statement sets out their case in one paragraph. It did not seek to evidence the stated need for agricultural workers dwellings in the area, which holdings within commuting distance could be served by the dwelling, why the two year marketing period was not long enough or why the price was not reasonable (other than referencing that research had identified properties of a similar size for a lower price), with particular regard to the supporting text to Policy H1A of the SADMP.
7. The Council only sought to evidence their case within their response to the appellant's cost application¹, in the week prior to the hearing and at the hearing, the Council conceded that the property had been marketed for a 'reasonable period' as required by Policy H1A.
8. The lack of evidence provided to substantiate the reason for refusal and delay in providing information are behaviours that constitute unreasonable behaviour as set out in the PPG. I have concluded that having regard to the provisions of the development plan, the development proposed should reasonably have been permitted and therefore the appellant has been faced with the unnecessary expense of lodging the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that an award of costs is justified.

Costs Order

10. 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 Mr M Beard, 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.
11. 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.

Alison Fish

INSPECTOR

¹ Titled 'Statement of Rebuttal in Response to Award of Costs Application'