
Costs Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Costs application in relation to Appeal Ref: APP/E3335/W/23/333331 Land at 355763 143568 Upper Wellesley Lane Dulcote, Wells, Somerset

- 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 Professor AJ & Dr KJ Andrew Bradley, Quality Milk Management Services Ltd for a full award of costs against Somerset Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for proposed new dwelling.
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Decision

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

The submissions

2. The application for an award of costs was made in writing by the applicant before the Hearing with the Council confirming that they would orally rebut the claim at the Hearing. The applicant expanded on their application for an award of costs orally at the Hearing.

The submissions for Professor AJ & Dr KJ Andrew Bradley, Quality Milk Management Services Ltd

3. The applicant's written application for costs states that they believe that the Council acted unreasonably in the determination of the appeal application. The applicant states that there were misleading statements in the case officer's report to the planning committee in 2020, that were not updated for the 2023 Planning Committee, failed to present all available information with the Council failing to understand, or wishing to understand, the business case and need to live on the site. That in light of the lack of objection from any statutory consultee, particularly Natural England, the Council have not provided the necessary evidence to justify the second reason for refusal related to harm to the Site of Special Scientific Interest (SSSI). With regard to the third reason for refusal, the applicant states that the Council has produced no evidence to contradict the submitted landscape report and its findings and that the proposal would not be detrimental to the Special Landscape Character Area. Furthermore, there were no local third-party objections with no one speaking in opposition to the proposal at the Planning Committee meeting.
4. The applicant verbally added to the above at the Hearing stating that the Council provided no oral evidence of harm to the SSSI at the Hearing and continued to consider that alternative sites outside of the SSSI should be

considered despite no requirement to do so in local or national planning policy or guidance. Furthermore, the council did not provide any evidence of landscape harm at the Hearing with the Planning Committee miss-led on the proposal by reason of not advising of the full comments from Natural England (NE) and the presentation of facts in an uninformed way with errors in the Committee Report.

The response by Somerset Council

5. The Council state that the three reasons for refusal are explained within the Committee Report with the proposal assessed against the development plan and the National Planning Policy Framework as a whole. With regard to the presentation at Committee, the Council state that it is not the job of officers to explain the whole report in detail as Members would have read it. As a result, the Council did not act unreasonably and the application for costs should be refused.

Reasons

6. 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. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the applicant's arguments relate to procedural and substantive claims.
7. The PPG advises behaviour that may give rise to a procedural award of costs against a local planning authority includes, deliberately concealing relevant evidence at the planning application stage. The PPG further advises that a substantive award of costs includes, amongst other things, a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
8. In light of the written evidence before the Council at the time of the planning application, that was less detailed than that explained by the applicant orally at the Hearing, I am not persuaded that the Council did not understand or did not wish to understand the proposal and need to live on site. The Council used its planning judgement and reasoned its decision in its Committee Report. Furthermore, the lack of objections from interested parties does not automatically mean that planning permission should be granted.
9. Although the applicant raises concerns with regard to the Committee Reports and officer presentations, I note from the minutes of the 2023 Planning Committee meeting that speakers in support of the application, along with the applicant, highlighted the comments from Natural England and outlined the case in support of the proposal. In addition, the applicant had the opportunity to verbally address the Committee with regard to any concerns regarding the report or officer presentation. As a result, in relation to these matters, I do not find unreasonable behaviour on procedural or substantive grounds.
10. The evidence produced by the Council in relation to the second and third reasons for refusal is however relatively restricted, even acknowledging that it has considered the proposal against the development plan as a whole. Furthermore, the Council only provided limited, vague and generalised

assertions regarding the proposal's impact at the Hearing in relation to these matters. The main thrust of the Council's case at the Hearing being harm to the SSSI and character and appearance of the area by virtue of the need for the dwelling having not been justified. This resulted in a lack of detailed assessment of the proposal against the relevant policies in the development plan related to the SSSI and the wider landscape.

11. The Council has continued to assert the need to consider sites outside of the SSSI without reference to a development plan policy requirement to do so and failed to provide a detailed objective analysis of harm to the SSSI other than through the loss of an area of grassland. In light of this, and given the comments in relation to this matter from NE and the Council's ecologist stating that this land is of limited value, the Council relied on vague and generalised assertions and failed to produce detailed evidence to substantiate this reason for refusal.
12. Similarly in relation to the third reason for refusal, the Council provided no detailed evidence to rebut the findings in the applicants' landscape report and provided only vague and generalised assertions regarding the visual impact from a public footpath. Furthermore, the Council failed to identify detailed harm to the Special Landscape Feature with regard to the impact from the proposal on its specific qualities taking into account mitigation provided by the applicant.
13. In light of the above, I therefore find that unreasonable behaviour on substantive grounds resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to reasons for refusal numbers 2 and 3 with regard to harm to the SSSI and wider character and appearance of the area and that accordingly a partial award of costs is justified.

Costs Order

14. 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 Professor AJ & Dr KJ Andrew Bradley, Quality Milk Management Services Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to reason for refusal numbers 2 and 3, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. 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.

C Rose

INSPECTOR