



Costs Decision

Site visit made on 16 July 2024

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2024

Costs application in relation to Appeal Ref: APP/E3335/W/24/3341854 at Dollings Pool Dairy, Donyatt Hill, Donyatt, Ilminster, Somerset TA19 0RY

- 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 A Aplin of Bickenhall Developments Ltd for a full award of costs against Somerset Council.
- The appeal was against the refusal of the Council to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the demolition of existing agricultural buildings and the erection of 6 No. dwellings with the formation of a new vehicular access there to without complying with a condition attached to planning permission Ref 20/00126/FUL, dated 16 April 2020.

Decision

1. The application for an award of costs is allowed in full, 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 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 PPG¹ advises that a Council may be at risk of costs on substantive grounds if, amongst other things, it fails to produce evidence to substantiate its reason for refusal on appeal; or makes vague or generalised assertions about a proposal's impact, unsupported by objective analysis.
4. The matter in dispute revolves around the character and appearance of the area. This requires a degree of subjective judgement. However, the Council's case makes only very limited, generalised references to the effect of the proposal on the surroundings of the site. It did not respond to the analysis provided by the applicant at appeal stage in respect of this matter.
5. Indeed, the Council's evidence in support of its case was thin. Its substantive reasoning consisted only of the reason for refusal itself and a paragraph in the Officer Report. No amplification of its case or rebuttal was made to the applicant's evidence during the appeal process. The Council has therefore failed to substantiate its case.
6. Consequently, I find that the Council has behaved unreasonably, having regard to the advice in the PPG. Reference has been made by the applicant to the costs incurred to them as a result of the delay caused by the refusal of

¹ Paragraph: 049 Reference ID: 16-049-20140306

planning permission. However, the PPG² states that costs awards cannot extend to compensation for indirect losses, such as those from any alleged delay in obtaining planning permission. Nevertheless, as a result of the behaviour of the Council, the applicant has incurred additional and wasted expense in having to make the appeal.

Conclusion

7. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. Therefore, a full award of costs is justified.

Costs Order

8. 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 A Aplin of Bickenhall Developments Ltd 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.
9. 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.

O Marigold

INSPECTOR

² Paragraph: 032 Reference ID: 16-032-20140306