



Costs Decision

Inquiry held on 24 September 2024

Site visit made on 24 September 2024

by **David Prentis BA BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th April 2025

Costs Application B in relation to Appeal Ref: APP/D0121/W/24/3343144 Land at Rectory Farm (North), Chescombe Road, Yatton BS49 4BZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Persimmon Homes Severn Valley for a partial award of costs against North Somerset Council.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.
-

Decision

1. The application for a partial award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 application and the response were made in writing.¹ The application was for a partial award in relation to two separate matters, land ownership/control and flood risk.

Land ownership/control

4. The Council submitted a note² which drew attention to Certificate C within the planning application form. The appellant had not been able to find out the names and addresses of the owners of some relatively small parts of the appeal site. The appellant complains that the Council's note amounted to a new reason for refusal, which caused it to incur unnecessary expense in writing a note of response³.

¹ ID63 and ID68

² ID38

³ ID43

5. The Council's note was submitted during the adjournment (following Day 6). It was not clear to me who had written the note or what purpose submitting it to the Inquiry was intended to serve. In particular, it was not clear to me whether the Council was in fact saying that the appeal should not be entertained because of a failure in relation to notifications. I sought clarification in my Adjournment Note No 2 on 25 November 2024. On 6 December 2024, the Council confirmed that it would not be pursuing the matter any further.
6. In responding to the application for costs, the Council pointed out that a Certificate of Transfer had been requested on 25 June 2024. This was necessary given the inconsistency between Land Registry plans and the application red line plan. The Council had also sought to clarify what steps had been taken to identify the owners. This information was sought on 13 August 2024. The appellant produced the information the Council had been seeking on 19 November 2024, after the Council's note had been submitted.
7. Overall, this appears to me to have been a minor matter which had little, if any, bearing on the merits of the appeal. Whilst it would have been better to pursue it outside the Inquiry, I do not think that putting in the note itself amounted to unreasonable behaviour. Moreover, the need for the note would have been avoided if the appellant had provided the information sought in a timely manner. I conclude that the conditions for a partial award of costs have not been met.

Flood risk

8. The appellant argues that, due to the Council raising new points through Mr Cage, a sitting day was lost on Day 7. There was also a need for a post-inquiry exchange of written representations.
9. As noted in my appeal decision, when the Inquiry resumed on Day 7, the Council's witness on flood risk (Mr Bunn) was unavailable. The Council called a consultant (Mr Cage) who adopted Mr Bunn's proof of evidence. Mr Cage had a number of points that he wished to make. The Council and the appellant disagreed as to whether these points amounted to new evidence or were merely legitimate comment on documents already before the Inquiry. Much of Day 7 was taken up with procedural submissions and adjournments, during which Mr Cage and Mr Mirams had some discussions and prepared summary notes of their respective positions. Having received those notes, I had a number of questions to ask. This took the remainder of that sitting day. My ruling,⁴ which was given at the start of Day 8, dealt with three matters, each of which is referred to in Costs Application B.

Speed of inundation

10. I refer to the importance of the Brookbanks FRA⁵ in my decision on Costs Application C. Having considered the Brookbanks FRA, the Council wanted to raise various matters. One of these was that, in the Council's view, the speed at which tidal flooding would reach the appeal site would be greater than suggested in the appellant's evidence. In my ruling, I found that this was an important point that needed to be understood properly. To achieve that, I had to ensure that Mr Mirams was given an opportunity to respond by producing a technical note. I therefore instituted a written procedure that extended beyond the sitting days of the Inquiry.

⁴ ID53

⁵ ID28

11. In my decision on Costs Application C, I have concluded that the appellant acted unreasonably by failing to provide the Brookbanks FRA to the Council when asked to do so. Speed of inundation was a new matter that arose for the first time at the Inquiry. However, the Council could not have raised it before the Inquiry because the appellant did not provide the relevant document until the evening of Day 1.
12. Ultimately, I did not agree with the Council's argument in relation to the speed of inundation. Nevertheless, the Council was entitled to see the Brookbanks FRA, which formed part of a related sequence of reports by Mr Mirams. It was a relevant and important document. The Council was then entitled to give evidence relating to it. This was not unreasonable behaviour.

Modelling the undefended scenario

13. As stated in my ruling, the allegation that inadequate modelling of the undefended scenario was a matter that should attract weight in the planning balance against the appeal was a new allegation. Moreover, it did not arise for the first time as a result of the Brookbanks FRA. It was unfair to raise the point at the Inquiry when it formed no part of the putative reasons for refusal or the Council's statement of case.
14. Whilst this was unreasonable behaviour, it did not lead to unnecessary expense. For reasons given in my ruling, I made clear that it was not necessary to delay the Inquiry for any further work. Very little of Day 7 was spent discussing this point. Following my ruling, it was not necessary for anyone to spend any further time on it.

Breach analysis in the defended scenario

15. Mr Cage's note commented on the absence of a breach analysis. However, as stated in my ruling, he did not go beyond what was already in Mr Bunn's proof. I also commented that Mr Bunn did not seem to think that this was an important point. My conclusion was that no-one had been prejudiced by Mr Cage merely mentioning it.
16. My ruling also said that it would be unfair if the Council were to seek to elevate the point, beyond what was in Mr Bunn's proof, to make a case that the absence of breach analysis should be regarded as a free-standing objection to the appeal. However, the Council did not do that. The Council did not act unreasonably.

Conclusion

17. I conclude that the conditions for a partial award of costs have not been met.

David Prentis

Inspector