
Costs Decision

Site visit made on 9 January 2025

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Costs application in relation to Appeal Ref: APP/E3335/W/24/3343122

Land north of Ducks View, Ducks Hill, Huish Episcopi, Langport TA10 9FL

- 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 Messrs PC and AJ Jotcham for a full award of costs against Somerset Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for Proposed development of nine dwellings with associated parking, services and domestic curtilage.
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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 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 appeal was made against non-determination of the planning application. The applicants consider that the failure of the Council to determine the planning application within a reasonable period represents both procedural and substantive unreasonable behaviour which has caused them to incur unnecessary and wasted expense in the appeal process.
4. The PPG explains that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision and why permission would not have been granted had the application been determined within the relevant period. The Council provided its putative reasons for refusal. It did not explain its reasons for not reaching a decision although in its response to the costs application it has indicated there have been issues around workloads and resourcing.
5. The Council set out that it would have refused the application as inappropriate development in the countryside, this matter relating to the impact on character and appearance. In addition, it would have refused it on technical grounds relating to protected species, protected habitats sites and flooding and drainage as well as the failure to provide affordable housing.
6. In terms of the first reason for refusal, the applicants sought pre-application advice prior to submission of the planning application which indicated that the scheme

would be acceptable due to the Council's housing supply position. Whilst this is not binding advice nor subject to the same degree of scrutiny or consultation as a full planning application, it was reasonable for the applicants to have anticipated that the scheme would be broadly acceptable given the positive comments received, particularly in respect of character and appearance. The Council continues to have an absence of a five year housing land supply which was the reason given for finding the location and character of the proposal under the pre-application process acceptable. In changing its position, given the housing supply circumstances are the same, the Council has behaved unreasonably.

7. The Council, in defending its shift in stance from the pre-application advice, has indicated that this is due to the response from the Parish Council. However, the objections raised by the Parish Council did not raise concerns about the site, scale and mass of the development or its impact on the character of the area which is what the Council's first reason for refusal related to. This consultee response does not justify this change in stance.
8. The technical matters, including the need for a flood risk assessment (FRA) were not raised at the pre-application stage. The Council has acknowledged that some consultee responses were received significantly after the end of the consultation period, due to workload and staffing pressures. This resulted in those responses subsequently being included in the Council's statement of case as the appeal had been lodged on the grounds of non-determination. The applicants responded to these matters with the inclusion of a FRA and updated technical information. The Council, when invited to comment on the applicants' response, did confirm that its putative reasons for refusal in respect of protected species, protected habitats sites and flooding and drainage had been addressed.
9. Had consultation responses been made available in a timely manner during the application process, it is evident that the applicants would have been able to address some of these technical matters and the appeal on those grounds would have been avoided. Given this was an appeal against non-determination, the Council should have reviewed its case promptly following the lodging of the appeal as part of sensible on-going case management, which it failed to do. Had it provided this information, that would have been a more helpful approach and would have certainly narrowed the issues at appeal, thus reducing the expense associated with the appeal. The Council behaved unreasonably in this respect.
10. The required technical information was needed either as part of the application process or, as happened here, as part of the appeal process. Thus, in terms of producing this information, the applicants have not been put to unnecessary or wasted expense and any costs associated with producing this technical information should be excluded from any award of costs. Nonetheless, the Council's behaviour has been unreasonable and led to the applicants having to spend time and expense in the appeal process in respect of these matters.
11. I recognise that there were issues for the Council around staffing levels and workloads and that delays have arisen because of this. Nevertheless, the appeal against non-determination was lodged nearly three months after the Council's decision due date of 26 January 2024. Even taking into account staff shortages, the lack of communication and failure to provide feedback despite several requests for this during the application process, indicates a lack of cooperation by the Council

and unreasonable behaviour. This has been a contributing factor to the appeal being lodged.

12. With regards to the provision of affordable housing, it will be seen that I have agreed with the applicants that this is not a piecemeal development to avoid such a contribution. The Council has acted inconsistently having allowed other schemes in similar circumstances with less time between what appear to be related developments, without making any such contribution. It also failed to follow well-established caselaw in respect of this matter. This also amounts to unreasonable behaviour by the Council.
13. Given all of the above, I consider all those matters the Council identified as reasons for refusal could have been addressed at the application stage had the Council acted consistently with its own advice and other decision making and had it provided timely feedback to the applicants. I therefore find that the Council has prevented and delayed granting planning permission for the proposed development which should have been permitted, having regard to local and national policies, it failed to produce evidence to substantiate each of its suggested reasons for refusal and made vague, generalised assertions about the proposal's impact, unsupported by any objective analysis.
14. The Council made its decision on the planning application as originally submitted. I appreciate that the onus is upon the applicants to submit an application and associated documents that demonstrate how the proposal meets requirements and enables consultations to be carried out. Except for the FRA, the technical matters to be addressed were relatively straightforward and could have reasonably been picked up during the application process. Even the FRA, had it been raised as an issue early on, may have been addressed. To my mind, this is in accordance with the aims of paragraph 39 of the National Planning Policy Framework which requires local planning authorities to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and to approve applications for sustainable development where possible. In this case, it was not possible because responses were not available to the applicants.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Costs Order

16. 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 Messrs PC and AJ Jotcham, 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.
17. The applicants are 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.

Rachael Pipkin

INSPECTOR