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## Costs Decision

Site visit made on 11 July 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: **28<sup>th</sup> August 2018**

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### **Costs application in relation to Appeal Ref: APP/R3325/W/18/3199542 Land opposite Tinkabee Cottage, Little Norton, Norton-sub-Hamdon, Stoke-sub-Hamdon TA14 6TE.**

- 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 D Hatton for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of the Council to grant planning permission for change of use of the land for the stationing of a log cabin and two shepherd huts.
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### **Decision**

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

### **Reasons**

2. 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 applicant claims that the Council has acted unreasonably in failing to give adequate reasons for refusal, and failing to determine similar cases in a consistent manner. Both are issues the PPG states can result in a substantive award of costs.
4. The applicant notes that the planning application was subject to negotiation and that that the Council's officer recommendation was for approval. However the Council is not bound by the recommendations of its officers, and so was entitled to take a contrary view in refusing the planning application. Nonetheless the applicant had a reasonable expectation that this contrary view would be fully explained.
5. The decision notice lists refusal of the planning application on the basis of scale, layout, materials, and failure to respect the rural character, appearance and general amenity of the area. The Council's appeal statement provides the source of further explanation, and identifies 3 main elements that would contribute to the alleged harm the development would cause.
6. Firstly, the appeal statement identifies visual harm due to the introduction of units of accommodation, paving, ancillary paraphernalia, parked and manoeuvring vehicles. As such the statement contradicts the Council landscape officer's observations that that the site is relatively unobtrusive, the proposed use low-key, and that the development could apparently be considered

acceptable within its landscape setting subject to restriction of lighting and maintenance and management of hedgerows. No explanation for this contradiction is provided within the Council's appeal statement, and in view of the mitigation measures recommended, no detailed identification of where, and specifically why visual harm would arise from the development within its setting is given. As such I agree with the applicant that the finding of visual harm is unsubstantiated and based on assertion rather than evidence.

7. Secondly, the appeal statement identifies harm to the character of the area due to increased traffic, activity and noise, and later implies an adverse economic effect to the rural economy on this basis. The Council's decision notice does not however conclude against development plan policies addressing economic development. Whilst the Council describes the rural character and tranquillity of the locality, and low levels of use of the lane, it does not substantiate its conclusion of harm through a clear comparative analysis of current and projected vehicular movements, or current and projected noise. The Council's statement that the site is currently 'just agricultural land' furthermore fails to acknowledge its current use as a smallholding and the vehicular movements and noise generated as a result of this use. As such the Council's findings of adverse impact again appear to be asserted rather than clearly quantified or evidenced.
8. Thirdly, the appeal statement identifies harm to the character of the area on the basis of the scale of the development. This is principally due to noise and visual impact, the first and second grounds dealt with above. Insofar as the Council indicates that the development is 'needlessly large', there is no explanation of the relevance or context within which 'need' has been judged.
9. In addition to the above the Council's decision notice specifically references 'materials', a further visual effect, however the Council's appeal statement does not directly address this point and provides no clear indication of why the materials indicated in the application, and which materials in particular are objectionable.
10. The applicant also claims that the Council failed to determine the planning application consistently, but, notwithstanding the discussion above, I generally agree with the Council's view that it is appropriate to assess the effects of development on the character and appearance of an area on a site specific basis. Whilst the applicant submitted a list of previous permissions as part of appeal submission, limited supporting information was provided, and no details of past refusals were included. I also note that the sites are not located in the immediate vicinity of the appeal site and that as such the effects and considerations are unlikely to have been identical. I conclude therefore that inconsistency in the Council's decision making has not been proven.

### **Conclusion**

11. Though I do not agree with the applicant's claim for costs on grounds that the Council failed to determine planning applications consistently, I agree that the Council failed to adequately substantiate its reasons for refusal, relying on assertion or omitting explanation entirely, and that in this regard acted unreasonably.
12. With particular regard to the fact that the planning application had been subject to detailed negotiation, and that its approval was recommended by

officers, I also conclude that the applicant incurred unnecessary or wasted expense in mounting an appeal. Notwithstanding the Council's right to reach a contrary decision to that recommended by its officers, the reasons for refusal of the planning application set out in the Council's appeal statement did not demonstrate that the development would be inconsistent with development plan policy.

13. As such a full 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 South Somerset District Council shall pay to Mr D Hatton, the costs of the appeal proceedings described in the heading of this decision.

15. The applicant is now invited to submit to South Somerset District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Benjamin Webb*

INSPECTOR