



Costs Decisions

Site visit made on 12 September 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 October 2023

Costs application A in relation to Appeal Ref: APP/R3325/W/23/3317386 Land to the north of Fore Street, Tatworth, South Somerset, TA20 2SJ

- 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 Joint Appeal Brewer, Lillington Land Allocation Ltd for a full award of costs against South Somerset District 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 outline planning permission with all matters reserved, except for access, for up to 35 dwellings.
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Costs application B in relation to Appeal Ref: APP/R3325/W/23/3317387 Land to the north of Fore Street, Tatworth, South Somerset, TA20 2SJ

- 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 Joint Appeal Brewer, Lillington Land Allocation Ltd for a full award of costs against South Somerset District 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 outline planning permission with all matters reserved, except for access, for up to 13 dwellings.
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Decisions

1. Applications A and B for an award of costs are partially 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 PPG¹ advises that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this include a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised, or inaccurate assertions about the impact of a proposal, which are unsupported by any objective analysis.
4. In respect of the scale of the proposals, the Council has highlighted housing growth in the area to date, as well as limited information about possible future development. However, in seeking to justify its case, the Council has provided little evidence or objective analysis to substantiate its case that the Appeal A and B proposals would have an identified impact on specific local services and

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

- facilities. As such, it has provided only generalised assertions that the proposals would result in excessive or unsustainable growth.
5. In respect of highway safety, the Council has identified constraints within the highway network, including its narrow sections without pavements, and that local roads are used by cyclists and pedestrians, including as a Safe Route to School. However, the Council has made only generalised concerns about the effects of the proposals in this respect. It has provided little detailed technical transport evidence to counter that provided by the applicants in respect of highway safety, or to justify its concerns contrary to the advice of the Highway Authority.
 6. In respect of ecological data, the stance of the Council reflected the view of one of its consultees. Surveys of species such as bats, reptiles and dormice were undertaken by the applicants and submitted with the appeals. However, I have found that the length of time since they were undertaken means that they do not provide a fully up-to-date assessment of the ecology of the site. Furthermore, this is not a matter that can be left to planning condition. The Council has therefore not been unreasonable in its behaviour in respect of this issue.
 7. The PPG advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. Although the Council did not determine the application within the period, it has made its concerns clear in its Statement of Case, within the timescales required by the appeal process.
 8. These concerns were the same as those raised by the Council in its decision to refuse an earlier application, except that information from Natural England which post-dated that decision meant that the effect of the proposals on phosphates became a further issue. Part of the delay in determining the appeal applications related to the need to secure mitigation for this. As I have found, the proposals do not provide sufficient mitigation in respect of phosphates and so its concerns and delay in this respect were not unreasonable.
 9. The applicants believe that the Council has not engaged in the drafting or negotiation of the Unilateral Undertakings (UUs). However, the Council has provided detailed comments in response to the submitted UUs. As such, the Council has not been unreasonable because of its delay in reaching decisions on the appeal applications, or in its handling of the UUs.
 10. Consequently, I consider that the Council has behaved unreasonably with respect to the substance of its case but only with regard to its second and third putative reasons for refusal, namely the effect of the proposals on services and facilities locally, and highway safety. In respect of these matters, it has caused the applicants to incur unnecessary or wasted expense in the appeal process.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the effect of the proposals on services and facilities locally, and in respect of highway safety, and a partial award of costs is therefore warranted.

Costs Order

12. 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 Joint Appeal Brewer, Lillington Land Allocation Ltd, the costs of the appeal proceedings described in the headings of these decisions, limited to those costs incurred with regard to the effect of the proposals on services and facilities locally, and in respect of highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicants are 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.

O Marigold

INSPECTOR