
Costs Decision

Inquiry held on 14, 15 and 16 July 2015

Site visit made on 15 July 2015

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 October 2015

Costs application in relation to Appeal Ref: APP/R3325/A/14/2222697 Land to the rear of Wincanton Community Hospital, Dancing Lane, Wincanton, Somerset BA9 9DQ

- 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 Hopkins Developments Ltd for a partial award of costs against South Somerset District 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 planning permission for a residential development of up to 55 dwellings, access works, relocation of NHS parking, provision of open space and other ancillary works.
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Decision

1. The application for an award of costs is refused.

The submissions for Hopkins Development Ltd

2. The application was submitted in writing at the Inquiry. This submission referred specifically to paragraphs 030 and 049 of the Planning Practice Guidance. A partial award was sought in relation to the Council's putative reasons for refusal 1, sustainability and accessibility, and 4, highway safety. The applicant argued that local planning authorities should follow previous decisions and not persist with objections which had already been considered and rejected at appeal.
3. The applicant further considered that although it was accepted that the 2012 decision¹ was a material consideration, reliance could not be placed upon it when its findings on sustainability were based on an objection by Somerset County Council (SCC), who had withdrawn their objections to the current scheme. SCC presented no evidence on highway safety. Furthermore, Councils should keep their cases under review, and, it was argued, the evidence presented on these matters was identical to that given at the recent Dancing Lane appeal², where it was comprehensively rejected.
4. On the basis of the position of SCC, and the findings of the Dancing Lane decision, the applicant considered that the Council should have withdrawn their case on reasons 1 and 4, as it was unreasonable to persist with their objections. Their technical evidence relied on what the Members felt or believed was an issue and was not founded on technical matters. The applicant

¹ APP/R3325/A/12/2170082

² APP/R3325/A/14/2224654

was put to extra expense in the preparation of their case to address these matters, which unnecessarily prolonged the length of the Inquiry.

5. While the Council argued that there was a difference between Dancing Lane and the appeal site, their witness had argued they were similar. Furthermore, regarding the position on the Travel Plan and accessibility, it is clear that the decision must be made on all measures. Although costs were not awarded on similar grounds at Dancing Lane, the rejection of the arguments there undermines their use in this appeal.

The response by South Somerset District Council

6. The Council responded orally at the Inquiry. In this response, they highlighted that the role of SCC as the highway authority was to comment on the proposal, and it is not clear that their advice went significantly beyond confirming the content of the Travel Plan. The matter of the sustainability of a site, it was argued, was a planning matter. Members were justified in taking their own view; it was a planning judgement. Nor can a Travel Plan be considered to 'cure' a poorly located site.
7. In terms of the Dancing Lane decision, the consideration that a review should have been made was, in the Council's view, flawed. The Inspector in that case agreed an unsustainable element to that site and noted the extra distance to the hospital site. That decision letter did not undermine the Council's position on the appeal.
8. It was further argued that in relation to the highway safety matters, Members took their own view, but supported this with technical evidence presented to the appeal; a similar cost application was also made at Dancing Lane but similarly failed.

Reasons

9. Paragraph 030 of the Planning Practice Guidance provides that costs may be awarded if the unreasonable behaviour of a party has directly caused another party to incur unnecessary or wasted expense in the appeal process.
10. There are two principal matters against which the allegation of unreasonable behaviour has been made, the Council's continued objection to the appeal on sustainability grounds, specifically the accessibility of the site, and their continued objections on highway safety.
11. In terms of sustainability, this is a planning matter to be decided on a full assessment of the complimentary or sometimes competing economic, social and environmental effects. A part of that assessment is the accessibility of a site and the reliance on less sustainable forms of transport. The 2012 decision did find that the site had relatively poor accessibility, and is accepted as a material consideration in this case.
12. SCC did not pursue an objection on accessibility as they did in 2012, having received and assessed a Travel Plan, which they would appear to have accepted addressed their concerns. Accessibility and sustainability are not black and white matters; a site sits on a continuum from highly accessible to inaccessible, and this makes up only part of an assessment as to whether it represents sustainable development. Nonetheless, that SCC may have found the Travel Plan acceptable could be considered to have altered the weight that

- the matter of accessibility would play in the assessment of sustainable development.
13. However, this does not mean that the Council are bound to alter their conclusions on sustainability. I may not have ultimately agreed with them, but it was a decision that was available to Members to conclude that, on their own assessment, using their planning and local knowledge, the accessibility of the site contributed to a conclusion that overall it did not represent sustainable development.
 14. I am also unconvinced by the argument that the Dancing Lane decision should have led to the Council withdrawing their position. While this scheme was ultimately allowed, the Dancing Lane decision acknowledged that the site's accessibility weighed in some measure against it, and it clearly differentiated itself from the appeal site in terms of distance³. Furthermore, Paragraph 48 of the 2012 decision indicated that Inspector's conclusion that the site was not in a particularly sustainable location.
 15. Whether at the time the Council witness had drawn conclusions on the similarity in the location of the two schemes is not sufficient to suggest that there is merit in the claim that the Council were unreasonable to pursue their case. It is a fact that the Inspector in the Dancing Lane decision clearly chose to differentiate between the two sites. Although my own decision led me to conclude that the additional distance would be unlikely to significantly alter future occupier's decisions on walking or cycling, the assessment of such matters is essentially a judgement. On balance, I conclude that the Council Members were not unreasonable in continuing to pursue their concerns regarding the accessibility of the site.
 16. Turning to highway safety, I accept that similar arguments were promoted at the Dancing Lane appeal and were not supported. This decision clearly noted that the conclusions were based on the low-level of increased traffic flow likely to stem from that appeal development, and discounted a cumulative assessment⁴ with the appeal before me.
 17. With that appeal now allowed, it was reasonable that the Council considered the cumulative impact of both that scheme and the appeal scheme in assessing highway safety risks. Although my own conclusions may have differed, this does not mean that the Council were unreasonable in pursuing their case on this point. I am satisfied that they submitted evidence to substantiate their concerns at the Inquiry.
 18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Mike Robins

INSPECTOR

³ Paragraphs 91 and 96

⁴ Paragraphs 77 and 78