

---

## Costs Decision

Site visit made on 2 December 2015

**by Neil Pope BA (Hons) MRTPI**

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

**Decision date: 10 December 2015**

---

### **Costs application in relation to Appeal Ref: APP/R3325/W/15/3063768 Land at Tanyard, Broadway, Ilminster, Somerset, TA19 9JT.**

- 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 J V Baker for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of outline planning permission for residential development comprising up to 16 dwellings and associated parking, landscaping and construction of access from Tanyard.
- 

### **Decision**

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

### **Reasons**

2. In considering this application I have had regard to the Government's Planning Practice Guide (PPG) relating to the award of costs. Amongst other things, this advises that costs may be awarded where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
  3. The Framework advises that local planning authorities (LPA) should approach decision-taking in a positive way and to look for solutions rather than problems, seeking to approve applications for sustainable development where possible. Applicants and LPAs are also encouraged to undertake pre-application engagement and to discuss the need for appropriate information, including Flood Risk Assessment (FRA). LPAs are also required to issue timely decisions and there is pressure, not least from the development industry, to determine planning applications as quickly as possible.
  4. I note that the applicant sought and obtained pre-application advice from the LPA. A FRA and Drainage Strategy were submitted with the application. (Whilst it is evident that the applicant sought the advice of the water company before submitting the application and studied the Environment Agency's (EA) Flood Risk maps, it is unclear if the views of the EA were sought and obtained.)
  5. In September 2014, and following the submission of the application, the EA wrote to the LPA to seek clarification regarding the flood risk. This was conveyed to the applicant's agent who, in turn, responded. However, in November 2014 the EA, having considered the applicant's comments, advised that the FRA was unsatisfactory and set out further details that were required.
-

6. The LPA sent these further comments of the EA onto the applicant's agent at the end of November 2014. In so doing, it advised the applicant's agent that the application would be recommended for refusal on flood risk grounds. The LPA identified two options. Either the application could be withdrawn or it would be refused. The applicant's agent was requested to inform the LPA which option its client wished to pursue "by the end of the week". In effect, this was just over 3.5 working days. No response was received and the application was refused on flood risk grounds.
7. I note the applicant's concerns that the LPA acted hastily in determining the application and made no telephone call or checks to ascertain if its e-mail had been received and made no attempt to follow it up. However, when the LPA sent its November e-mail a period of 14 weeks had lapsed since the application had been registered. Moreover, several weeks had passed since the appellant was alerted to the EA's concerns regarding the adequacy of the FRA.
8. Given the pressures and demands on planning departments it is fanciful to expect LPA officers to be in a position whereby they are able to send 'reminder' messages to applicants, especially those represented by professional agents. As set out within the Framework, to avoid delay, applicants should discuss what information is needed with a LPA and expert bodies as soon as possible. It is unclear to me why the applicant chose not to discuss land drainage matters with the EA from the outset. Had it done so the outcome may have been very different. On the basis of the information before it at that time, the LPA did not act unreasonably by refusing permission on flood risk grounds.
9. In April 2015, following the submission of a further FRA and Land Drainage Strategy (as part of a new planning application) the EA withdrew its land drainage objection. The LPA has not pursued flood risk objections during the appeal and within its Statement dated August 2015 advised that this matter had been addressed. The LPA is unable to turn a refusal into an approval and up until August 2015, the appellant did not therefore incur unnecessary or wasted expense in pursuing this matter to appeal.
10. Within its Statement, the LPA raised new issues / concerns relating to conflict with policy SS2 of the South Somerset Local Plan (2006-2028). This did not form part of its reasons for refusal. The PPG advises that LPA's may be at risk of an award of costs if they introduce a new reason for refusal. In effect, the LPA replaced the reason for refusal relating to flood risk with a settlement policy objection.
11. Following the determination of the appeal scheme there was a change to the development plan with the adoption of the above noted Local Plan. In such circumstances, it would be entirely appropriate for an LPA to review its case. However, the adoption of the Local Plan was expected and policy SS2 was taken into account by the LPA when it determined the application.
12. Policy SS2 now carries the weight attributable to section 38(6) of the Town and Country Planning Act 1990 (as amended). However, it is disingenuous of the LPA to argue that it gave this policy significantly less weight when it determined the application. In making their recommendations the Council's officers noted that this policy had already been given substantial weight on appeal. Moreover, since refusing permission the LPA is no longer able to demonstrate 5 years worth of deliverable housing sites. As a consequence, the housing supply aspect of policy SS2 is now out-of-date. The LPA acted

unreasonably in seeking to have the appeal dismissed on the basis of any conflict with Local Plan policy SS2.

13. The appeal was submitted in June 2015. It is not lost on me that this was after the EA's revised position was known to the applicant. At this time the applicant also knew that the LPA was raising concerns, under Local Plan policy SS2, in respect of the new planning application. The applicant's Appeal Statement of June 2015 includes arguments regarding the materiality of this policy. The concerns set out in the LPA's Statement of August 2015 would not therefore have come as a surprise to the applicant. However, the LPA failed to substantiate its concerns regarding policy SS2. As a consequence, this caused the appellant to incur unnecessary expense within its Final Comments dated September 2015 in responding to the LPA's settlement policy argument.
14. I find that the LPA acted unreasonably by failing to substantiate its concerns in respect of policy SS2. This caused the appellant to incur unnecessary expense in submitting more detailed Final Comments (FC) than should have been necessary. (Sections 9-11 of the FC relate to other matters which would have been required regardless of the policy issue.)
15. Given all of the above, I conclude that a partial award of costs is justified.

#### **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 South Somerset District Council shall pay to Mr J V Baker, the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in responding to the concerns raised within the Council's Statement dated August 2015 relating to Local Plan policy SS2.
17. 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.

*Neil Pope*

Inspector