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## Costs Decision

Site visit made on 11 November 2013

**by Gareth Symons BSc Hons DipTP MRTPI**

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

**Decision date: 10 December 2013**

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### **Costs application in relation to Appeal Ref: APP/R3325/A/13/2197541 Land west of Newtown Road, Langport, Somerset**

- 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 C Perrin for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of planning permission for up to 36 dwellings (C3) on approximately 1.7ha; open space recreation land (D2) including children's play area and seating/viewing area on approximately 2ha; surface improvements to footpath L13/53; drainage works; access; community car parking; associated estate roads; footpaths and landscaping; retention of woodland and orchard.
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### **Decision**

1. The application is granted and a partial award of costs is made in the terms set out in the Costs Order below.

### **Reasons**

2. There are differing views about the level of engagement between the appellant's agent and the Council before the application was refused. Nevertheless, there was pre-application contact and meetings between the parties and although the appellant may feel that the Council could have acted more proactively and positively, the Council did not behave unreasonably.
3. The application attracted an objection from the Local Highway Authority (LHA). It is noted that in the consultation response to the Council from the LHA about the application it is stated that "the Highway Authority at the pre application stage also expressed concern about the form and nature of the access being proposed, making it clear....that a 'mini roundabout' was considered unacceptable and that it should be replaced with a ghost island right turn arrangement....For reasons which are unknown the developer has chosen to ignore this advice and has now submitted an application which only proposes a simple priority junction onto the A372". Consequently the LHA had "no alternative but to recommend that the application be refused". There was also an objection from the Environment Agency (EA) on flood risk grounds. It was concerned that the submitted Flood Risk Assessment did not comply with the requirements of the National Planning Policy Framework and thus was not suitable to assess the flood risk implications of the proposed development.
4. It seems from this background that the LHA was clear about the form of the access needed into the appeal site from the outset and had this advice been

followed then maybe it might not have objected to the application. The onus was also on the appellant to show that the development would not pose an unacceptable flood risk. After submitting a revised access plan and further information about flooding both the LHA and the EA eventually withdrew their objections. The Council also had a duty to determine the application within a prescribed period and it did that at the last moment, whilst recognising that the EA objection might be overcome and thus this reason for refusal could fall. Upon these technical objections being withdrawn the Council accepted that these grounds of refusal could no longer be supported and thus the appellant did not incur any expense in the appeal process contesting these issues. Neither of these key objections could have been dealt with by imposing planning conditions to make the development acceptable in my view. On these parts of the costs claim the Council did not behave unreasonably and the appellant did not incur unnecessary expense.

5. As for the remaining refusal reason primarily on landscape grounds, set in the context of the Council not having a five year supply of housing land, I do have misgivings about the strength of the Council's case. It is noted that the Council's landscape officer did not give unqualified support to the scheme, based on previous findings about the site's low capacity for development and the possibility of other less sensitive sites coming forward in Langport as part of the review of the local plan. However, setting these aside for the moment it is clear that in straight landscape visual assessment terms he found the appeal development to be broadly acceptable and should there be a time when there is a need for further housing in the town, then development in the form indicated might be permissible.
6. From what I have read it is very difficult to see, bearing in mind the advice of its own landscape expert, how the Council was then able to find that the appeal development would be visually intrusive and would cause significant harm to the broader landscape. There is no objective analysis of why or how the views of the landscape officer were seemingly not preferred. There is no, for example, evidence from any other landscape assessor to show how a rational and clearly distinguishable different landscape view could be reached. In the officer report on the application under the section 'Character and Appearance of the Area' there is only very limited reference to the views of the Council's own landscape officer and I cannot see from this section how the view is reached, against the in principle landscape advice that the development was broadly acceptable, that the proposal raises 'fundamental landscape issues'.
7. Moreover, the basic qualification to the landscape officer's advice was if there was a need for further housing. Given the accepted lack of a five year supply of housing land which means the housing supply policies from the South Somerset Local Plan are out of date, and the Government's very clear strategy to boost the supply of housing, then that need must be now and not at some date in the future that is dependent on identifying other sites via the local plan review. With these points in mind, the clear benefits arising from the scheme and the absence of any justified harm to the landscape, or any other harm apart from the technical LHA and EA objections that were stand alone and eventually overcome, reason for refusal 1 was very thinly based. This was not a respectable basis on which to refuse the application and it fell well short of standing up to scrutiny. On this ground the Council acted unreasonably and the appellant undoubtedly incurred unnecessary appeal expense as a result.

8. In view of the above a partial award of costs is justified. That should relate to the first reason for refusal only.

**Costs Order**

9. 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 C Perrin his costs relating to the first reason for refusing planning permission only, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. Mr C Perrin 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.

*Gareth Symons*

INSPECTOR