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## Costs Decision

Site visit made on 25 February 2014

**by Kathrine Haddrell BA(Hons) BTP MRTPI**

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

**Decision date: 30 April 2014**

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**Costs application in relation to Appeal Ref: APP/R3325/A/13/2206348  
Land to West of Bower Hinton Manor, Middle Street, Bower Hinton,  
Martock TA12 6LL**

- 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 Tom Fleming for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of the Council to grant subject to condition planning permission for a new house with a private drive serving a double garage, parking and turning area set to the rear of the house, together with associated site works. Also removal of existing site frontage railings and hedging and replacement with new stone walls and railings.
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### Decision

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

### Reasons

2. The application for costs was made on the basis of Circular 03/2009 which has been superseded by the Planning Practice Guidance (PPG). However, having regard to the submission put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the PPG.
3. The PPG advises that costs may only be awarded where a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expenses.
4. The appeal site is within a Conservation Area and adjacent to a listed building, therefore special attention must be paid to the desirability of preserving the setting of the listed building in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and also to the desirability of preserving or enhancing the character or appearance of the Conservation Area in accordance with section 72 of the Act. This is a statutory duty.
5. Given that I found that the appeal proposal would cause material harm to the setting of the listed building and would not preserve or enhance the character or appearance of the Conservation Area, I do not agree that the appeal proposal should clearly have been permitted. I do not agree that the Council behaved unreasonably in respect of the non-prejudicial pre-application advice that was provided. It appears that assistance was given to the appellant in

order to find a scheme that would be acceptable, but that fundamental issues relating to the loss of open space emerged through the consultation process.

6. I do not agree that the proposed development should have clearly been permitted having regard to the development plan and national policy, rather, detailed policies in the development plan and the Framework relating to design and the conservation of heritage assets outweigh the location of the appeal site within the village development boundary. For the same reason, I do not agree that the reasons for refusal were based on local opposition rather than on valid planning reasons.
7. I do not consider that the appellant was put to unnecessary cost in bringing the appeal in respect of the first two reasons for refusal. From the evidence that I have seen, including the officer's delegated report, the first two of the Council's reasons for refusal were not vague and in coming to a balanced decision, weight was given to a range of consultee responses, not all of which were available at the pre-application stage.
8. However, I do accept that the third reason for refusal, relating to overlooking and loss of privacy is inaccurate, given that amended plans showed that the window that would overlook Bower Hinton Manor would be obscure glazed and that this was capable of being dealt with by condition. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been justified in respect of the third reason for refusal and that a partial award of costs is justified.

### **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 Tom Fleming, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the issue concerning the third reason for refusal.
10. 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.

*Kathrine Haddrell*

INSPECTOR