

---

## Costs Decision

Hearing held on 8 March 2016

Site visit made on 9 March 2016

**by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

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

**Decision date: 03 June 2016**

---

### **Costs application in relation to Appeal Ref: APP/R3325/W/15/3133660 Land west of Gainsborough, Milborne Port, DT9 5BA**

- 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 Waddeton Park Ltd for a full, and in the alternative, a partial award of costs against South Somerset District Council.
  - The hearing was in connection with an appeal against the refusal of outline planning permission for development of 54 residential units (including 35% affordable housing), care home (Use Class C2), allotments, heritage interpretation board(s), associated access, parking, landscaping and infrastructure.
- 

### **Decision**

1. The application for a full award of costs is refused, but the application for a partial award of costs is allowed in the terms set out below.

#### **The submissions for Waddeton Park Ltd**

2. The costs application was submitted in writing.<sup>1</sup> The following additional points were made orally. Consultees and the Council's officers were clear about the acceptability of the proposal. The Member's response lacked objective analysis. At the Hearing the Council was unable to indicate the degree of harm likely to heritage assets. The Council's case does not demonstrate any serious residual impact, and strayed beyond the reasons for refusal in referring to the travel plan.

#### **The response by South Somerset District Council**

3. The response was made in writing.<sup>2</sup> In summary Members have a responsibility to take into account the views of consultees, but are entitled to come to a different view. There is a degree of subjectivity in assessing landscape impact and effect on historic assets. The PICARDY model cannot be relied upon for this type of junction and Members used their local experience to come to a view about traffic impact given that the evidence submitted was not comprehensive. No evidence was provided to justify the loss of best and most versatile agricultural land. Members carried out an appropriate planning balance and there is no evidence of unreasonable behaviour or wasted expenses.

---

<sup>1</sup> HD8.

<sup>2</sup> HD7.

## Reasons

4. The *Planning Practice Guidance* 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.
5. The Council's case regarding the effects on the setting of the village and heritage assets did not lack substance. The way the Council dealt with these issues was not unreasonable. The weight given to the effects on agricultural land in the planning balance is a matter of judgement. I have come to a different conclusion to the Council about this. However, I do not consider that it was unreasonable for the Council to exercise its judgement in the way that it did, or to find conflict with national policy on these grounds. There are no grounds to justify a full award of costs. I deal next with the application for a partial award, which concerns the way the Council dealt with highway issues.
6. It was appropriate to discuss the travel plan at the Hearing. This discussion did not introduce a new reason for refusal, because if targets were not met additional traffic might use the A30/Gainsborough junction.
7. The Council's second reason for refusal states that it has not been demonstrated that the local road network can safely accommodate the additional traffic without severe adverse impact on highways safety. At the Hearing the Council did not dispute the appellant's predicted traffic generation from the proposed development, or its distribution, but maintained an objection on highway safety grounds. This concerned the operation of the junction of Gainsborough with the A30, taking into account the proximity of the junctions with Rosemary Street and Goathill Road. However, the Council did not at any time indicate what other information it required to demonstrate that the network could safely accommodate the likely additional traffic.
8. With respect to the Rosemary Street junction, the Council did not dispute the predicted left turn movements out of Gainsborough in the peak hours attributable to the proposed development. Furthermore, no evidence was adduced by the Council in support of its concern that vehicles attempting to leave Rosemary Street would have increased left turn traffic from Gainsborough to negotiate which would be well within the stopping distance of the vehicle, and that this would have significant safety implications. No evidence about vehicle speeds was submitted in support of this assertion. I consider that the mainstay of the Council's concerns about highway safety lacks substance. As a detailed and technical matter this is not something that could reasonably be determined solely by judgement. Members did not take any alternative technical advice in forming their stance contrary to their officers' professional advice. I find that the Council's approach to highway safety was unreasonable.
9. Local residents also raised concerns about the highway impact of the proposal, and it would have been likely that the appellant would have taken measures to address these concerns at the Hearing, irrespective of the Council's case. However, it seems to me, in the absence of a highway objection from the Council, that this might have been a matter that the appellant believed could have been adequately addressed by its planning expert, without the need for a highways expert to appear. The Council's stance probably denied the appellant this choice. I find, therefore, that the Council's unreasonable behaviour was

likely to have resulted in the appellant engaging a highways expert to appear at the Hearing, which might otherwise not have been necessary.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the *Guidance*, has been demonstrated, and that the application for a partial award of costs should be allowed.

**Costs Order**

11. 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 Waddeton Park Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appearance of a highways expert at the Hearing.
12. 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.

*John Woolcock*  
Inspector