
Costs Decision

Site visit made on 27 May 2020

by Rory Cridland LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Costs application in relation to Appeal Ref: APP/R3325/W/20/3246302 Land off Shiremoor Hill, Merriott TA16 5PH

- 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 Stonewater Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for the erection of 39 no. dwellings and associated works including access, open space, parking, landscaping and drainage infrastructure.
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Decision

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

Preliminary matters

2. The Council has not submitted a response to the costs application. The Planning Practice Guidance ("the PPG") states that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case. I have taken this into account in my reasoning below.

Reasons

3. The PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. Furthermore, it provides a number of examples of the types of behaviour that may give rise to a substantive award of costs against a local planning authority. Those relied on by the applicant include where they (i) prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (ii) fail to produce evidence to substantiate each reason for refusal on appeal; (iii) make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; (iv) refuse planning permission on a planning ground capable of being dealt with by condition; (v) where they fail to determine similar cases in a consistent manner; and (vi) where they fail to grant a further planning permission for a

- scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
5. I should say at the outset that I do not agree that the Council has failed to determine similar cases in a consistent manner. Furthermore, it is clear that there is a material difference between the extant permission granted on the site and the appeal proposal, not least in terms of the quantum of housing. I am not therefore persuaded that the Council has demonstrated unreasonable behaviour in respect of examples (v) and (vi) above.
 6. Nevertheless, four reasons for refusal (RFR) were provided by the Council and all were maintained as part of this appeal. In relation to RFR 1 (insufficient parking), while I note no objection was raised by the Highway Authority, their consultation response draws attention to the shortfall in parking provision and makes clear that this matter should be given further consideration by the Council. Likewise, while I note Council officers concluded that the level of parking proposed was adequate, it nevertheless fell below the optimum levels set out in the Council's adopted guidance. In such circumstances, the matter is one of planning judgement and the Council are entitled to come to a different conclusion to its officers. The case advanced, while unsuccessful, was nevertheless clear and not without merit. As such, I do not consider the Council has acted unreasonably in maintaining this reason for refusal.
 7. However, the same cannot be said of the Council's other reasons for refusal. In respect of RFR 2 (biodiversity and heritage assets), the applicant's ecological assessments indicate that the impact on nearby ecological receptors would be of low significance and that the proposed culvert had been designed to allow small animals to continue to travel up and downstream. This was accepted by the Council's ecological consultee who broadly agreed with the applicant's conclusions and recommendations.
 8. While the Council is not required to follow the advice of its professional officers, if a different decision is reached by members, the Council has to demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In the present case, no robust evidence has been put forward by the Council to challenge these conclusions and no specific impacts have been identified.
 9. Likewise, the Council's assertion that the culvert and bridge would negatively impact on the Merriott Conservation Area (CA) is not supported by evidence. No explanation has been provided as to why the Council considers these features would result in any material harm to the character and appearance of the CA. Overall, I consider the Council's case in respect of RFR 2 is both vague and unsubstantiated and the Council has acted unreasonably in maintaining it as part of the appeal.
 10. Turning then to RFR 3 (energy efficiency), the Council's reason for refusal refers to a failure to maximise solar gain opportunities and the absence of heat source pumps and solar panels. However, while Policy EQ1 of the South Somerset Local Plan 2006 – 2028¹ encourages the use of energy efficiency measures, it does not impose any requirement that they are included in development proposals. No firm policy basis has been provided by the Council to substantiate this reason for refusal.

¹ Adopted 2015.

11. Likewise, in respect of RFR 4 (affordable homes), Policy HG3 does not impose any requirement for a particular mix or type of affordable housing. Instead, it leaves it to the parties to negotiate on a site-specific basis taking into account site specific factors. In the present case, the affordable housing mix accords with that requested by the Council's Strategic Housing Officer. As my decision makes clear, no robust evidence has been submitted which would indicate that there was a significantly greater need for 1-bedroom dwellings than there is for other types.
12. Accordingly, while I find no unreasonable behaviour on the part of the Council in maintaining RFR 1, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations RFRs 2, 3 and 4 should not have been maintained. As such, I find the Council has acted unreasonably in this respect. This has resulted in the appellant having incurred unnecessary expense in defending these matters as part of this appeal.
13. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting RFRs 2 (heritage assets and biodiversity), 3 (energy efficiency) and 4 (affordable housing), is justified.

Costs Order

14. 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 Stonewater Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting refusal reason 2 (biodiversity and heritage), 3 (energy efficiency) and 4 (affordable homes).
15. The applicant is now invited to submit to the 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.

Rory Cridland

INSPECTOR