



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: 09 July 2020

Costs application in relation to Appeal Ref: APP/R3325/W/20/3245545 Land South of the Fox and Hounds Public House, Broadway, Charlton Adam

- 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 & Mrs Simon Small & Emma James & Sarah Stanley for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for residential development of up to 24 no. dwellings with access via the existing Fox and Hounds public house.
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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. Furthermore, it makes clear that local planning authorities are at risk of an award of costs if they, amongst other things, (i) fail to produce evidence to substantiate each reason for refusal on appeal, or (ii) refuse planning permission on a planning ground capable of being dealt with by condition.
4. The application essentially relies on the fact that members went against the recommendation of their officers, failed to substantiate their reasons for refusal and refused planning permission on a planning ground capable of being dealt with by condition.
5. Three reasons for refusal (RFR) were provided by the Council and all were maintained as part of this appeal; drainage (RFR 1), character and appearance (RFR 2) and highway safety (RFR 3). My decision makes clear that I do not agree with the Council on any of these matters. However, the concerns raised by the Council in relation to RFR 2 are matters of planning judgement, and the Council is, in my view, entitled to reach its own conclusions. The case advanced, while unsuccessful, was nevertheless cogent and I am not persuaded that the Council has acted unreasonably in maintaining it.

6. However, the plans clearly show that pedestrian access was to be provided onto Broadway and not via the public house beer garden. No concerns were raised by the local highway authority and the Council's officers concluded that the proposed access was acceptable. 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.
7. In the present case, no robust evidence has been put forward by the Council to challenge the conclusions of its officers. Likewise, there is no evidence which would indicate that there was a material risk to pedestrian safety either at the proposed access, along Broadway or in the village more widely. As a result, I consider the Council has failed to substantiate this reason for refusal and, in doing so, has acted unreasonably.
8. Turning then to drainage, Wessex Water advised that the proposed development would not exacerbate the existing problems in respect of drainage and that there is sufficient capacity within the receiving network to accommodate the proposed flows. In the present case, no clear evidence has been provided by the Council which would indicate that the conclusions reached by Wessex Water were incorrect. While I acknowledge the Council may have some residual concerns in view of the area's existing drainage problem, no clear explanation has been provided as to why these could not be adequately dealt with by means of a condition.
9. Accordingly, while I find no unreasonable behaviour on the part of the Council regarding RFR 2, on the evidence submitted, its reasons in respect of RFR 1 and RFR 3 should not have been maintained. As such, I find the Council has acted unreasonably in this respect and that this has resulted in the applicant having incurred unnecessary expense in responding to these matters.
10. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the Council's reasons for refusal in respect of RFR1 and RFR 3 is justified.

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 Mr & Mrs Simon Small & Emma James & Sarah Stanley, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting RFR 1 (drainage) and RFR 3 (highway safety).
12. 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