
Costs Decision

Inquiry opened on 20 May 2014

Site visit made on 1 October 2014

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 03 June 2015

Costs application in relation to Appeal A: APP/R3325/A/13/2209680 Land East of Mount Hindrance Farm, Mount Hindrance Lane, Chard

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by MacTaggart & Mickel Homes Ltd and the S E Blackburn Discretionary Trust for a partial award of costs against South Somerset District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for mixed development comprising 335 (no.) new family homes, provision of a floodlit full size football pitch, unlit full size training pitch and mini pitches, with associated multi-use clubhouse, spectator facilities and vehicle parking area; hub for local neighbourhood facilities and other community uses; public open space; landscaping; drainage and other facilities; associated vehicular and pedestrian accesses; land regrading; associated infrastructure; and engineering works.
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Decision

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

The Submissions for the Appellant

2. These were made in writing and elaborated upon at the Inquiry.

The Response by the Council

3. This was made in writing and elaborated upon at the Inquiry.

Reasons

4. As set out in paragraph 030¹ of the PPG², costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraph 047³ of the PPG says that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal.
6. Examples of unreasonable behaviour which may result in an award of costs include: lack of co-operation with the other party or parties; delay in providing information or other failure to adhere to deadlines; and introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would otherwise not have arisen.

¹ Reference ID: 16-030-20140306

² Planning Practice Guidance

³ Reference ID: 16-047-20140306

7. The Inquiry opened on 20 May 2014, and sat for four days, closing on 23 May 2014 (Inquiry 1). It proceeded on its analysis of the proposal at issue on the basis, accepted between the main parties in a Statement of Common Ground, that the Council could not demonstrate a five-year supply of deliverable housing sites.
8. Well after the Inquiry closed, the Council drew to my attention evidence claiming that it could demonstrate a five-year supply of deliverable housing sites. Bearing in mind the importance of that claim for my determination of the appeal, I was left with no alternative but to re-open the Inquiry and conjoin it with that into Appeal B (Inquiry 2)⁴.
9. The evidence brought forward by the Council had a base date of 31 March 2014 and was submitted to the Programme Officer administering the examination into the South Somerset Local Plan 2006-2028 on 23 May 2014. It is evident therefore, that in the lead-up to Inquiry 1, and at the time when it was sitting, with the Council readily accepting that it could not demonstrate a five-year supply of deliverable housing sites, the Council was, in another forum, arguing strongly that it could. This is clearly unreasonable and demonstrates a lack of co-operation.
10. Even if the Council is right that the information on housing land supply was in no fit state to present to Inquiry 1 (something that I find hard to accept given that it was submitted to the Programme Officer on 23 May 2014), it could have outlined the position and requested an adjournment of Inquiry 1 to allow the information to be put together properly, and placed before their District Executive Committee. That would have been inconvenient but it would have saved everyone from proceeding with Inquiry 1 on a false premise. There is every possibility that had this course been taken, the matter could have been dealt with much more quickly, and easily.
11. Instead, the evidence was produced well after Inquiry 1 was closed; a clear failure to adhere to deadlines. The introduction of this fresh and substantial evidence at a late stage meant that the appellant had to incur extra expense for preparatory work for Inquiry 2 that would otherwise not have arisen. To make matters worse, in the lead up to Inquiry 2, the Council then produced a set of fresh figures, with a revised base date of 31 July 2014. This led to the appellant having to produce rebuttal proofs of evidence to address it.
12. Taking all those points together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 MacTaggart and Mickel Homes Ltd and the S E Blackburn Discretionary Trust, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the unreasonable behaviour of the Council, outlined above.

⁴ APP/R3325/A/13/2203867

14. 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.

Paul Griffiths

INSPECTOR