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## Costs Decision

Site visit made on 13 October 2015

**by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC**

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

**Decision date: 23 February 2016**

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### **Costs application in relation to Appeal Ref: APP/R3325/W/15/3131031 Land west of Triways, Foldhill Lane, Martock, Somerset TA12 6PQ**

- 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 Martock Farms Ltd for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of the Council to grant planning permission for residential development of up to 35 dwellings.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) 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. The costs application and the Council's response were submitted in writing.
  3. The costs application relates to substantive matters, examples of which are provided in Paragraph 16-049-20140306 of the PPG and include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant cites the Council's unreasonable behaviour as including failure to produce evidence to substantiate each reason for refusal on appeal. The applicant further considers that the Council refused planning permission on a planning ground capable of being dealt with by conditions, and that that suitable conditions would have enabled the proposed development to go ahead. This was a case in which the Council's officers recommended the application be permitted and the committee, after due consideration, did not accept the advice of the officers.
  4. In relation to the Council's first reason for refusal, the matter of landscape impact is one of judgement. Accordingly, the members were entitled to reach a different view on the overall landscape harm from that of the officer, bearing in mind that the landscape architect continued to express concern with regard to breaching the strong boundary of the route of the former railway line. Although the appellant states that the Council did not put forward any objective analysis to support this reason for refusal, I consider that the landscape officer's views on the principle of the incursion of the site into the countryside were clearly stated. Additionally, the Council commented on why the appeal
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proposal as residential development was considered to have a differing impact on the landscape from that of the recently constructed care home. The Council's position was also supported by the Peripheral Landscape Study of Martock provided as part of the Council's evidence. I therefore find that there was sufficient substantive analysis to support the reason for refusal in regard to landscape matters.

5. With regard to the loss of agricultural land which was referred to in the Council's first reason for refusal, I accept the applicant's contention that the Council failed to put forward any substantive evidence in this regard. It is undisputed that the appeal site comprises agricultural land. The applicant is unable to confirm whether it is Grade 3a or 3b land and the Council asserts it is 3a. However, there is very little in the evidence put forward by the applicant which persuades me that this was a matter in which they incurred wasted expense.
6. In relation to drainage, which was the basis of the second reason for refusal, officers had advised that there was potentially a workable drainage scheme and that details could be addressed at a detailed design stage. However, despite the extensive correspondence which had taken place between the appellant's drainage consultants and the Council's engineers and others, the report before members made clear that infiltration tests had not been carried out and the nature of the final solution was not clear cut. The Council's evidence states that it was made clear that failure to submit full drainage details at reserved matters stage could lead to a recommendation of refusal on these grounds or that the proposals may need to be redesigned in a manner which might affect the number of dwellings or the visual impact of the proposals. In the light of the comments made by the Somerset Drainage Boards Consortium and local knowledge, including the evidence of local residents, the Council did not act unreasonably in determining that they were not satisfied with the matter being deferred to the stage of approval of details following the grant of planning permission and therefore in refusing the proposal.
7. The applicant considers that the matter of drainage could have dealt with by means of a condition and addressed at reserved matters stage. It will be clear from my appeal decision that I consider that as the applicant sought a given number of dwellings, and these were suggested as being restricted to a specific area of the site with all matters reserved for later approval, I consider that addressing these matters by condition was not appropriate in this instance. Accordingly, I consider that the appeal in this respect was not avoidable.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Jennifer Tempest*

INSPECTOR