

Costs Decision

Inquiry held on 9 and 10 May 2017

Site visit made on 10 May 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 28 July 2017

Costs application in relation to Appeal Ref: APP/G1250/W/16/3159914 37-39 Oxford Road, Bournemouth, Dorset BH8 8EY

- 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 Bracken Developments Limited for a full award of costs against Bournemouth Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission to erect a 16 storey block of student accommodation.
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Decision

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

The submissions for Bracken Developments Limited

2. The applicant considers that the Council behaved unreasonably in relation to the substance of the case leading to an appeal which should not have been necessary and, therefore, incurred the applicant in wasted expense.
3. It is common ground that the appeal proposal would be in conflict with Policy CS8 of the Council's Core Strategy (as well as other supporting policies). Planning permission was refused on the basis that, whilst the Council accepted at the time of its decision that development of the site for office use was not viable, the site had not been adequately marketed for employment uses. This was used to justify refusal of the appeal proposal, which comprised student accommodation only, regardless of the viability of the proposal. At the Inquiry the Council changed its position and contended that the site could be developed viably with an element of employment use. However, the Council's viability evidence did not show that a scheme that would comply fully with Policy CS8 would be viable. The Council, therefore, had no reasonable grounds to oppose the appeal scheme.
4. In reply to the Council's response, the applicant further argues that, in giving determinative weight to the conflict with Policy CS8, the Council had to find that the site could be viably developed with a policy compliant mix of uses. However that case made not made out.

The response by Bournemouth Borough Council

5. The Council refused the application because the applicant had not made sufficient efforts to secure some form of employment use within the proposal. It took into account other considerations and also considered that the applicant's assessment of the prospects for the local economy were unduly
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pessimistic. The issue of viability was not included in the reasons for refusal as the Council relied on the findings of an independent assessment which was subsequently found to be inaccurate. The inaccuracy stemmed from misleading information supplied by the applicant.

6. The applicant chose to introduce viability as part of its case at the appeal and the Council was entitled to update its position on this matter in response. The Council recognises that a policy compliant scheme is not viable, but argues that the need to consider the scarcity of employment land is also a material consideration. The proposal would result in the loss of a key employment site at the Borough's most sustainable location. The circumstances of the case are complex and changed in the period leading up to the Inquiry. The applicant's view of the Council's position may have been different if the viability assessments used at the Inquiry had been available at the time of the application. The situation is not clear-cut and relies on subjective issues which are for the Inspector to determine, but the Council's approach has been clearly reasoned in its evidence.

Reasons

7. 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 Council's position with regard to the viability of the scheme at the time the application was determined arose from what appears to be a genuine misunderstanding. The applicant's case at the appeal placed considerable reliance on viability matters and it was not, therefore, unreasonable of the Council to respond based on a corrected understanding of the position.
8. The parties agree that the appeal turns on balancing the acknowledged conflict with Policy CS8 (and the supporting development plan policies cited in the decision notice) with other material considerations. The Council further contends that the scarcity of employment land in the Borough is an important consideration weighing against the proposal. Both party's viability witnesses recognised that the assessment of viability involves an element of professional judgement. Moreover, having reached a conclusion on such considerations, the weight to be attached to them is a matter of planning judgement.
9. I am not persuaded that, having established that a fully policy compliant mix of uses would not be viable, the policy can be dispensed with altogether. The Council was entitled to consider whether a scheme with a lesser employment content may still serve the underlying objectives of the policy. The evidence suggests that the viability of such a scheme would be more finely balanced. I have found that the benefits of the proposal outweigh the policy conflict and the absence of an employment use. Nevertheless, there is sufficient substance in the Council's evidence to show that it acted reasonably in reaching a different finding.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

Simon Warder

INSPECTOR