



Costs Decisions

Site visit made on 8 July 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Costs application in relation to Appeal A, Ref: APP/B1740/W/19/3224446 Land of Sandle Lodge, Main Road, Sandleheath SP6 1PF

- 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 Jamie Ward, Healthy Developments Ltd for a full award of costs against New Forest District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 3 detached and 6 semi-detached new homes within the curtilage of the existing Sandle Lodge (identified in the Local Plan as area "SAND1") with associated access, parking, public open space and drainage facilities.
-

Costs application in relation to Appeal B, Ref: APP/B1740/W/19/3224460 Land of Sandle Lodge, Main Road, Sandleheath SP6 1PF

- 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 Jamie Ward, Healthy Developments Ltd for a full award of costs against New Forest District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 5 detached new homes within the curtilage of the existing Sandle Lodge (adjacent to land identified in the Local Plan as area "SAND1") with associated access, parking, etc.
-

Decisions

1. The applications for an award of costs are allowed, in part, in the terms set out below.

Reasons

2. The Planning Practice Guidance 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.
3. Appeal A concerns a proposal for open market housing on a site allocated in the development plan for affordable housing. However, the allocation predates the current iteration of the National Planning Policy Framework that indicates that affordable housing should not be provided on sites of this scale.
4. However, balancing the Framework against the development plan involves the planning judgement of the decision maker. Given the affordable housing need and specific allocation for affordable housing, the Council's reasoning appears to indicate that the Council would consider the development plan to carry

- greater weight in any event. Although that is not my finding, that would not be unreasonable behaviour.
5. Even if this approach were not followed the appellant contends that the development in Appeal A is not viable. The Council had raised concerns about the viability evidence that had been provided with the application and so some formal response to the Council, with additional evidence would likely have been required, if the Council were to set aside the policy requirements of the allocation on viability grounds. The preparation of that evidence does not, therefore, amount to unreasonable behaviour in the appeal process.
 6. That said, the Council have maintained that the two appeals should be considered as a single development which would trigger an affordable housing requirement. For reasons set out in my main decision, I find such an approach unjustified. Whilst the development viability has not been central to my decision, the additional work that the appellant was required to undertake in respect of viability in response to this aspect of the Council's position was therefore unnecessary and a wasted expense.
 7. Turning to the effect on the character and appearance of the area, it does appear that the Council may have had a preconceived idea over the form that the development should take. There is also no robust evidence as to any suitable alternative to the appellant's drainage scheme. However, whilst I have disagreed with the Council's assessment of the effect on the character and appearance of the area, the Environmental Design Team's Landscape and Urban Design response does provide some analysis of the context and explains why the proposals are considered by the Council to be inappropriate in design terms. Therefore, I find that the Council's position in this regard is not unsubstantiated, nor unreasonable.
 8. In terms of ecology, it is not clear precisely what the Council's ecologist found unacceptable in the proposals for Appeal B. By the time the Council submitted its appeal statement, the Council's Ecologist was still said to be 'not convinced' with regard to the conservation of important features on the site. Against this background, I can understand why the appellant felt it necessary to produce further evidence to clarify his position, but with clearer guidance as to the alleged harm from the Council this would not have been necessary, or could have been more focussed. I, therefore, find this behaviour unreasonable and resulting in wasted expense.
 9. In respect of Appeal B, the appellant is concerned that the Council has failed to apply the presumption in favour of sustainable development outlined in the National Planning Policy Framework (the Framework). However, whilst through negotiation it may have been possible to agree suitable mitigation in respect of European nature conservation sites with the Council, the mitigation presented with the appeal is uncertain. In accordance with paragraph 177 of the Framework, this disengages the presumption in favour of sustainable development. Whilst the Council may be content with other mechanisms to secure mitigation, for the reasons given in my main decision, I have broadly agreed with the Council's reasoning based on the situation that existed at the time of the appeals. As such, the Council's behaviour in this regard is not unreasonable.
 10. I understand the appellant's frustration with the Council's handing of pre-application advice and the subsequent failure to determine the application. The

Council's behaviour and lack of clarity has led to some wasted expense in the appeal process, but in light of the foregoing, this is not in respect of the full costs of the appeal.

11. I, therefore, find that a partial award of costs is justified.

Costs Order

12. 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 New Forest District Council shall pay to Mr Jamie Ward, Healthy Developments Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of:

- Viability evidence regarding assessing the viability of the two proposals, Appeal A and Appeal B, together as one single development; and
- Additional Ecology evidence prepared in support of the appeal proceedings;

such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to New Forest District 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.

M Bale

INSPECTOR