
Costs Decision

Site visit made on 20 May 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Costs application in relation to Appeal Ref: APP/B1225/W/19/3220929 Land adjoining 11 Bell Street, Swanage BH19 2RY

- 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 and Mrs Scott for a full award of costs against Purbeck District Council.
 - The appeal was against the refusal of planning permission to create two new dwellings on surplus land and garden.
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Decision

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

Procedural Matter

2. The decision to refuse planning permission was made by Purbeck District Council, which ceased to exist on 1 April 2019, following a merger with East Dorset District Council, North Dorset District Council, Weymouth and Portland Borough Council, and West Dorset District Council to form the new Dorset Council.

Reasons

3. The Planning Practice Guidance (the 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.
4. The PPG indicates that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact, which are not supported by any objective analysis. Although the final decision of the Members was contrary to the advice of Officers, there was agreement between Officers and Members that the scheme resulted in less than substantial harm to the character or appearance of the Herston Conservation Area (the CA). The Members did not, therefore, depart from the Officers' professional advice regarding the impact of the development on the CA.
5. Where less than substantial harm is found to a heritage asset, the National Planning Policy Framework requires the decision-maker to weigh the harm against the public benefits of the scheme. In these circumstances, the Members were entitled to place different weight on the public benefits of the scheme to Officers, and to conclude that they did not outweigh the harm. I

therefore do not consider that the Members were unreasonable in coming to their conclusion.

6. The PPG also indicates that local planning authorities are at risk of an award of costs if they fail to determine similar cases in a consistent manner. In this regard, the applicant refers to an application for 4 dwellings that was refused by the Council on 21 August 2018; the day before the application giving rise to this appeal was submitted. The application for 4 dwellings was refused for two reasons; failure to preserve or enhance the CA, and harm to the setting of an adjacent listed building. Both reasons for refusal indicated that the harm arose from the impacts of Units C and D. The applicant was therefore entitled to expect that a revised application omitting Units C and D, whilst keeping Units A and B unchanged, would overcome the previous reasons for refusal.
7. The reason for refusal on the revised 2-dwelling scheme was differently worded, but was ostensibly the same as for the previous decision; that the development would result in less than substantial harm to the CA that was not outweighed by the public benefits. This decision was made only 11 weeks after the decision on the 4-dwelling scheme that indicated that only Units C and D gave rise to the refusal. There were no significant changes in national or local planning policy in that time, and no changes in site circumstances that would explain why a different decision should be made on the revised application for Units A and B so soon afterwards.
8. I therefore conclude that the Council has acted unreasonably, by failing to determine the two applications in a consistent manner. This has resulted in the applicant incurring unnecessary expense in having to take the 2-dwelling scheme through the appeal process. However, the extent of this unnecessary expense is reduced, as the applicants also elected to appeal against the 4-dwelling scheme. The 2 appeals were linked, and the evidence that was produced in respect of the 4-dwelling scheme necessarily covered the merits of Units A and B. Any unnecessary or wasted expense is therefore limited to any costs involved in pursuing the 2-dwelling appeal that would not have already been necessarily incurred through the 4-dwelling appeal.

Costs Order

9. 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 Dorset Council shall pay to Mr and Mrs Scott, the costs of the appeal proceedings described in the heading of this decision, limited to those costs that would not necessarily have been incurred in pursuing the 4-dwelling appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Dorset 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.

Nick Davies

INSPECTOR