The Planning Inspectorate

Costs Decision

Site visit made on 14 August 2019

by L Crouch BA (Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Costs application in relation to Appeal Ref: APP/P1235/W/19/3226368
Land to the East of Hetherly Road, Weymouth DT3 5JN

- 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 Palmer Homes Ltd for a full award of costs against Dorset Council.
- The appeal was against the refusal of planning permission to erect five detached dwellings.

Decision

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

Procedural Matter

2. Weymouth & Portland Borough Council determined the outline planning permission. The Council has since become a unitary authority and is now known as Dorset Council.

Reasons

3. The National 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.

4. The Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.

5. The planning application was recommended for approval by Officers and was over-turned by Members at Planning Committee. Members considered that the planning application was not in accordance with the West Dorset, Weymouth and Portland Local Plan 2015 (LP) Policy COM5, namely point three, which requires alternative and/or suitable replacement provision of equal or better recreational quality or value be provided.

6. The applicant believe that Members were 'plainly unfair and unreasonable', mis-applied Policy COM5 and were not objective in their decision making as they did not consider point four of Policy COM5 fully, which is separated by an 'or' in the text of the policy. The applicant considers they have demonstrated that the land is surplus, as it is being sold by the Council, and there was alternative space within the wider area, that access was permissive and could

be revoked. Therefore, COM5 point four would apply and alternative uses allowed.

7. COM5 places importance on the 'public value' of an open space. Members took the view that the land was an important open space and valued by the public. The Council's evidence states that the discussion was clear at the Committee and 'their objective analysis was supported by reasons why they considered there was a shortfall of open space in the vicinity'. However, in this case little evidence has been put forward which substantiates this analysis and I am not satisfied that the Council have clearly demonstrated that they have backed up its case with sufficient evidence to substantiate its reasoning. Therefore, it is not clear for what reason they believed that there was a shortfall of open space in the area. The fact that it the land has public value locally does not outweigh the need to objectively demonstrate that the land is not surplus. In addition, there is no public right of access to the land.

8. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

10. 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 Palmer Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's reason for refusal, which concerned alleged conflict with Policy COM5 of the West Dorset, Weymouth and Portland Local Plan 2015.

11. 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. 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.

L Crouch

INSPECTOR