
Costs Decision

Site visit made on 11 September 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Costs application in relation to Appeal Ref: APP/D0121/W/19/3230403 Land at Serbert Way, Portishead, Somerset BS20 7GD

- 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 S Jenkins, Swangate Developments Ltd and Anchor, for a full award of costs against North Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of an extra care development, comprising 96 no. 1 and 2 bedroom units and 1 no. guest suite; associated access, parking and landscaping (use Class C2).
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Decision

1. The application for costs is refused.

Reasons

2. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant has referred to policy SA4 of the adopted Site Allocation Plan (SAP), which the Council used in their reason for refusal. This is a policy with some flexibility built into it, but it still makes clear that allocated employment sites only be developed for such uses unless certain criteria are met. As can be seen from my decision letter, I have similarly found that the proposal for an extra care facility does not meet this criterion currently, as set out in policy SA4. Considering all matters, including the benefits of the scheme, I have dismissed the appeal. Therefore, I do not agree that the proposal unquestionably complied with this policy.
5. The applicant has suggested that the Council pre-determined the planning application. However, this was a recently allocated site and so I can understand the position of the Council in considering permitting an alternative use. However, they did produce a detailed and justified planning report and Statement of Case to explain why they considered the proposal would be contrary to policy SA4. I also have no substantive evidence that this planning

decision was based on the need for potential alternative sites for businesses at Old Mill Road.

6. I understand that the marketing activity was agreed with the Council prior to it being undertaken, but the Council subsequently had concerns with the results. However, from the Council evidence it is clear that their objections to the proposal was more than just issues with the marketing evidence. Therefore, this indicates that even if the Council accepted this aspect of the evidence, this would not have changed the overall decision that was made at the planning application stage.
7. The applicant also states that the Council did not consider important material considerations in their planning balance. Whilst coverage of some of these matters may be brief in the Council's evidence, it does address issues of meeting housing needs, the housing land supply issue, flood risk, and some of the other benefits. Whilst the Council may not have expressly attributed weight to certain potential benefits in their report, they have undertaken an appropriate balance of the planning proposals. The delegated report concludes that the harm outweighs the benefits overall.
8. I recognise that there was a rebuttal letter and legal opinions submitted, but there is no clear evidence that these were not considered by the Council appropriately or that these should have resulted in the approval of the planning application.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

S. Rennie

INSPECTOR