



Costs Decision

Site visit made on 19 February 2020

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Costs application in relation to Appeal Ref: APP/U1105/W/19/3241441 Land at Pit Orchard, Bim Bom Lane, Kilmington EX13 7SL

- 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 Jonathan and Mrs Clare Hansford for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the construction of 5 no. dwellings.
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Decision

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

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. The application for costs relies on substantive matters relating to the planning merits of the appeal. The appellant cites that the Council was unreasonable in considering that affordable housing should be provided on the site, failing to take proper account of the previously granted planning permission, as well as the status of the site as a brownfield site, and failing to engage with the appellant. There is also a reference to failing to consider the benefits of the proposed scheme.
4. The appellant contends that the size of the site falls below that on which affordable housing should be sought, with regard to the thresholds set out in the National Planning Policy Framework (the Framework). However, the site lies outside of the defined area of the settlement which it lies near to and in such circumstances, development is only permitted where for affordable housing, as an exception to normal planning policy. This is an approach supported by the Framework. The site also lies within an Area of Outstanding Natural Beauty, a designated rural area. As such, I consider that the Council was entitled to consider that there should be an affordable housing provision.
5. It is clear from the submitted information that the Council had regard to the previously granted planning permission on the site but considered that it was not a sufficient reason to justify a further grant of planning permission. This is a matter of planning judgement for the decision maker and, indeed, is a judgement that I have agreed with. Similarly, the Council were aware of the brownfield nature of the site, accepting that there was an extant planning

permission in place. As such, I find nothing that convinces me that these matters were not considered or that the Council was in any way unreasonable in the consideration of these matters.

6. The appellant further asserts that the Council has not engaged satisfactorily in order to avoid the appeal process. However, it is clear from the evidence before me that the Council considered the scheme to be unacceptable with reference to the policies of the development plan and to other material considerations. In such circumstances, I do not find that the Council could reasonably have taken a different position. A policy compliant development has previously been granted planning permission, indicating that a form of development would be acceptable on this site. However, the Council consider that the details of the current scheme were unacceptable. This appears to be a reasonable position for the Council to adopt.
7. In respect of the benefits of the scheme, the Council within the delegated report clearly refers to the potential benefits and weighs these matters when making its decision.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Martin Allen

INSPECTOR