



Costs Decision

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2020

Costs application in relation to Appeal Ref: APP/F2605/W/20/3245672 The Old Waggon and Horses, Chapel Street, Shipdham IP25 7LB

- 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 N Paske (Bowbridge Homes (Shipdham) Limited) for a full award of costs against Breckland District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
-

Decision

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

Reasons

2. The 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.
3. The applicant claims that the Council applied the wrong policy and as a result there was no proper consideration of the benefits of the proposed development, and no balancing exercise was undertaken. Therefore, the Council was unable to undertake the assessment required under paragraph 11 of the National Planning Policy Framework. In the applicant's view refusing planning permission has had the effect of preventing, or at the very least, delaying development that should be permitted which has a detrimental impact on wider proposals and the Council's overall strategy for growth in Shipdham.
4. The applicant received planning permission for demolition of the old Public House, central garage and retail units and the erection of a convenience store, retail units and flats at the Old Waggon and Horses¹ on the appeal site. The approved layout for this development also allows access to 90 dwellings on a site to the north of the appeal site². The appeal site would also facilitate access to at least a further 55 dwellings within Shipdham Housing Allocation 2 "Land west of Brick Kiln Lane".
5. Following approval of the original planning permission the Council granted planning permission for 36 dwellings on land to the south of the appeal site³ which is in its ownership. In order for safe access to be achieved to both sites,

¹ 3PL/2016/0655/F (the original planning permission)

² 3PL/2013/0095/O & 3PL/2017/0757/D

³ 3PL/2019/1056/O

the Highway Authority required the access to the appeal site to be moved to the west, to facilitate adequate separation between the accesses to the two developments.

6. Following discussions, the applicant submitted an application under section 73 of the Town and Country Planning Act 1990 for the development of the appeal site without complying with condition No 2 of the original planning permission involving a revised scheme for the appeal site. A separate planning application for just the access to a residential site to the north of the appeal site was also submitted. The planning application for the access was granted by the Council⁴, but the S73 planning application for the revised scheme (incorporating the revised access) was refused and is the subject of the associated appeal decision⁵.
7. However, in my decision I have found that the nature of the development proposed is such that it cannot be considered under the provisions of Section 73, as applied for. Rather, an application for full planning permission under section 70 of the Act would need to be made in order to progress the development proposed.
8. Therefore, having dismissed the appeal on procedural grounds, I have not gone on to assess the merits of the case. Consequently, I am not in a position to consider an award for costs on the basis it has been made, and therefore the application is refused.

Zoe Raygen

INSPECTOR

⁴ 3PL/2019/1214/F

⁵ 3PL/2019/1308/VAR