
Costs Decisions

Site visit made on 2 June 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Costs applications in relation to Appeal Ref: APP/D1265/W/19/3242683 Land adjoining Jubilee Farm, Burts Lane, Mannington, Wimborne, Dorset BH21 7JX

- 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 applications are made by Mr P Bascombe for a full award of costs against Dorset Council and Natural England.
 - The appeal was against the a refusal of details pursuant to a condition imposed by Article 3(1) of The Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO') and Regulation 75 of The Conservation of Habitats and Species Regulations 2017 on a planning permission subject to Prior Approval Ref 3/19/1460/PNAGD, granted by the GPDO after Dorset Council failed to give notice of its decision on an application for prior approval under Schedule 2, Part 3, Class Q of the GPDO dated 3 July 2019.
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Decisions

1. The applications for an award of costs are 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. Despite the appellant's evidence to the contrary, early consultation responses from Natural England (NE) appear to have been based upon an assumption that the site was within a 400m straight line distance of designated European sites¹ (the '400m zone'), where new residential development is not usually supported. There is no evidence that the Council challenged this assumption. However, the notice of refusal indicates an acceptance from the Council that the site could be considered outside the 400m zone. Therefore, the evidence does not indicate that the Council unquestioningly followed NE's position.
4. There was no clear acceptance by NE that the site was outside the 400m zone until a response directly to me as part of the appeal process on 19 May 2020. However, the position does appear to have been accepted by NE by 4 February 2020 when, in a letter to the Council, the site was described as being within the '400m Consultation Area' and 'directly adjacent to the 400m straight line distance'.

¹ The Dorset Heathlands Special Protection Area, the Dorset Heathlands Ramsar and the Dorset Heaths Special Area of Conservation.

5. Although there has been no explanation as to NE's change in position and whilst the Council may have been influenced by NE's conclusions, based upon its earlier assumption, that the site was physically within the 400m zone has not been part of the Council's case. Therefore, there has been no wasted expense in the appeal process arising from this.
6. Nevertheless, both the Council and NE have maintained to date that the way that future occupiers are likely to use the site means that it should be considered as being within the 400m zone. While an existing yard that gives access to the site is within the 400m zone, the appellant has proposed planning obligations that would include securing an alternative access and erecting a fence to prevent the curtilage, access arrangements and other domestic activities informally extending into the 400m zone.
7. Throughout consideration of the application and appeal, the Council has continued to find fault in the unilateral undertaking that would secure these obligations. However, having regard to the most recent evidence, the Council's outstanding case appears to be based upon enforcement concerns around a need to regularly visit the site to ensure that the obligations are complied with.
8. This stated requirement to police the obligations, however, is not evidence that they could not be enforced. Moreover, this position, held by the Council and NE, is to assume that a future occupier would actively seek to breach the obligations. To make a decision on the basis of such unsubstantiated assertion and speculation is unreasonable. I return to this behaviour later.
9. As set out in my main appeal decision, the appeal turns on the effect of the development on the integrity of the European sites. In this regard, the appellant has pointed to guidance in the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD). In particular, there are worked examples in the SPD that indicate how a site would be considered where it was situated very close to the 400m zone.
10. Indeed, the SPD appears to be clear that where a site is adjacent to, but outside the 400m straight line distance, likely significant effects on the European sites can be mitigated through measures set out in the SPD. There is also Policy ME2 of the Christchurch and East Dorset Local Plan Core Strategy 2014 that makes a distinction between sites within and outside the 400m zone.
11. In this context, I understand the appellant's views that that the decision should have been made in accordance with the development plan unless material considerations indicated otherwise, and criticism of the Council's defence in terms of reasons to depart from the adopted policy. However, this appeal does not relate to a planning application and determination must be made in accordance with the Conservation of Habitats and Species Regulations 2017 (CHSR). In particular, Regulation 77(7) indicates that the development may only be approved after having ascertained that it will not adversely affect the integrity of the site.
12. Whilst the SPD provides helpful guidance on assessment and mitigation measures, and there is no evidence of other comparable sites where its guidance has not been followed, it is not a project specific appropriate assessment under the CHSR. The SPD does not give evidence that the particular project to which this appeal relates will not adversely affect the integrity of the site.

13. In its response to the Council of 4 February 2020, provided with the Council's appeal questionnaire and appellant's final comments, NE noted circumstances of the appeal site, such as its accessibility to the designated sites. It also spoke of possible predation by domestic cats and the extent of their ranging. This was raised again in NE's response to me of 19 May 2020 when a distinction was drawn between cat movement patterns in urban and rural areas.
14. I can understand the appellant's frustration that there is nothing in the SPD to suggest that its clearly worked examples may not apply in a rural area, especially as these matters were introduced late in the process. However, whilst it seems likely that evidence around cat movements, for example, may have informed the initial formulation of the SPD policy, no substantive evidence to counter these points has been provided, including whether the distance, even via the new access, from the barn to the European sites would be so great as to deter access for recreation. Importantly, with these matters before me, I cannot dispel all reasonable scientific doubt about the effects of the proposal on the European sites. Accordingly, a decision contrary to the position of NE as the appropriate nature conservation body cannot be justified and the Council's overall position is not unreasonable.
15. Concluding on this application, there are aspects of both the Council's and NE's behaviour that I have found to be unreasonable. However, in terms of the determinative issue of the case, being the effect of this development on the integrity of the European Sites, both the Council's and NE's positions were set out by the time of the Council's appeal statement.
16. Although clouded by the other evidence surrounding the site's location relative to the European Sites and the various submissions about enforceability of the planning obligations, the lack of substantive evidence sufficient to dispel all reasonable scientific doubt about the effects on the integrity of the site means that approval could not be forthcoming. Even accounting for the unreasonable behaviour that I have identified, therefore, an appeal would not have been avoided. I conclude that, with regard to the main issue, NE has explained its concerns and the Council has provided a meaningful defence overall.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated.

M Bale

INSPECTOR