

---

## Costs Decision

Site visit made on 23 June 2020

**by L McKay MA MRTPI**

**Inspector appointed by the Secretary of State**

**Decision date: 06 August 2020**

---

### **Costs application in relation to Appeal Ref: APP/D1265/W/20/3245198 Beehive Self Storage, Gold Hill Business Park, Gold Hill, Child Okeford DT11 8HF**

- 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 Paddock Green Limited for a full award of costs against Dorset Council.
  - The appeal was against the refusal of planning permission for redevelopment of the site for the erection of 68 No. dwellinghouses with associated access and public highway improvements and open space.
- 

### **Decision**

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

### **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 contends that the Council has acted unreasonably on substantive grounds in relation to a number of points, which I take in turn.
4. In both its officer report and planning statement, the Council identified the absence of a 5-year housing land supply, and that paragraph 11d) of the National Planning Policy Framework (the Framework) therefore applied and the policies most important for determining the application were out of date. It then undertook a planning balance with regard to the three dimensions of sustainable development set out in the Framework. The PPG is clear that it is for the decision maker to decide what weight is to be given to the material considerations in each case. Therefore, while it would have been helpful for the Council to set out its reasoning with regard to the weight it gave to the out-of-date policies, it was not unreasonable of it to afford them greater weight than the applicant would prefer.
5. Both main parties have assessed the density of development in different ways, with the Council omitting areas of open space from its calculation. It is unclear why this approach was taken, given that layout was a reserved matter and the amount of open space was not fixed. Nevertheless, using the appellant's density calculation, I have reached a similar conclusion to the Council in terms of the harmful impact of the proposal on the character and appearance of the area.
6. The Council considered many of the purported benefits of the scheme, including the provision of housing, economic benefits, provision of a footway and the potential to reduce HGV movements, and clearly applied the 'tilted balance',

reaching a balanced conclusion in the terms set out in Framework paragraph 11d)ii).

7. The Council however failed to consider in its balancing exercise that part of the site was previously developed land (PDL), despite identifying this fact, and despite the support in local and national policy for development on PDL. The failure to do so is unreasonable behaviour. However, I have found that as only part of the site is PDL and most is in a beneficial use, the benefits of re-developing the PDL for housing are limited. I cannot therefore be certain that, had the Council weighed this benefit in the balance, it would have reached a different conclusion. Therefore, the appeal is still likely to have been made, and consequently no wasted or unnecessary expense has been demonstrated.
8. The Council's first reason for refusal refers to Framework paragraph 79, however no conflict with that paragraph is identified in its officer report or appeal statement. Therefore, it has not substantiated its case in that regard and that is unreasonable behaviour. However, the applicant has dealt with this relatively briefly in their grounds of appeal. Furthermore, given the location of the site in the countryside it is a matter with which I would have had to engage when assessing the proposal against the Framework as a material consideration. Therefore, it has not been demonstrated that the applicant has incurred unnecessary or wasted expense dealing with this matter.
9. The applicant then contends that it was unreasonable that the Council did not change the description of development despite having had an amended scheme in front of it for 9 months before making its decision. There is no obligation on the Council to accept amendments during the course of an application, even if it has time to do so. Consequently, it was not unreasonable for the Council to consider whether the amendments would address its concerns and, having concluded that they would not, to determine the application on the basis of the original submitted scheme. Although the communication of this to the applicant could perhaps have been clearer, the scheme that the Council determined was evident from the officer report and decision. As such, I find no unreasonable behaviour in this regard.
10. It would have been evident during the application process that planning obligations would be required for affordable housing and infrastructure provision, and that a s106 agreement would therefore need to be prepared. The absence of such an agreement formed part of the Council's reasons for refusal. The correspondence before me indicates that there were discussions between the Council and applicant about the financial contributions and infrastructure provision required to address the reason for refusal, and that these took some considerable time to resolve. Considering its decision, it is not unreasonable that in these initial discussions the Council provided details related to the 68-dwelling scheme. However, I note that contributions for the smaller scheme were subsequently incorporated into the s106 agreement submitted during the appeal.
11. Furthermore, although initially the Council suggested the applicant approach the Parish Council in respect of identifying proposals for off-site infrastructure provision, it appears that the Council subsequently undertook these investigations and provided this information. There is no substantive evidence before me that the applicant undertook any abortive work, and therefore incurred any unnecessary or wasted expense in pursuing this themselves.
12. Accordingly, while there were clearly some delays in providing the applicant with the information necessary to draft the s106 agreement, a multi-lateral agreement was nevertheless completed and submitted in sufficient time for me to consider it when determining this appeal. The applicant would have incurred the cost of

preparing such an agreement irrespective of the outcome of this appeal, and indeed, even if the Council had resolved to grant permission. Therefore, I find that no unnecessary or wasted expense was incurred in relation to the preparation of the multi-lateral S106 agreement.

13. However, during the initial discussions the Council pursued a position that it expected, and indeed preferred, that the planning obligations were secured through a unilateral undertaking (UU). This was despite the applicant's clearly stated concerns that the planning obligations in respect of affordable housing would place obligations on the Council, requiring it to enter into the agreement. The Council now suggests that it would have assessed a UU and only then considered whether a bilateral agreement would have been more appropriate, however there is no substantive evidence before me that the necessary affordable housing could have been properly secured through a UU. Therefore, pursuing this stance was unreasonable behaviour by the Council.
14. Although the Council now suggests that a UU was more expedient during the COVID-19 pandemic, I note that its original suggestion to proceed in this way was well before any restrictions were put in place. Furthermore, it has evidently been possible to produce a completed multi-lateral agreement during the COVID-19 restrictions. As such, I do not accept the Council's contention in that regard.
15. The perceived reluctance of the Council to enter into the s106 agreement led to the applicant producing drafts of both a UU and a multi-lateral agreement in order to attempt to address the Council's third reason for refusal. The UU was subsequently superseded by the multi-lateral s106 agreement now before me. Therefore, the preparation of the UU was abortive and could have been avoided had the Council confirmed its willingness to enter into a multi-lateral agreement at an earlier stage. Consequently, I find that the applicant incurred unnecessary and wasted expense in preparing a UU, and I therefore award partial costs limited to those incurred in the preparation of that document.

### **Conclusion**

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated only in respect of the preparation of the UU submitted by the applicant. Therefore, only a partial award of costs is justified.

### **Costs Order**

17. 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 Paddock Green Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of the undated unilateral undertaking submitted by the applicant with their final comments; such costs to be assessed in the Senior Courts Costs Office if not agreed. 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.

*L McKay*

INSPECTOR