
Costs Decision

Site visit made on 8 September 2020

by J Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 11th September 2020

**Costs application in relation to Appeal Ref: APP/D1265/W/20/3252152
Former West Lulworth C of E Primary School, School Lane, West Lulworth,
Dorset BH20 5SA**

- 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 Willton Homes Ltd for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for the removal of condition 13 attached to planning permission 6/2018/0653 for the change of use of existing buildings, conversion of existing school building, demolition of extensions and erection of 1 1/2 storey extension to form 3 dwelling houses and erection of 6 dwelling houses with associated parking and landscaping without complying with a condition
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses but 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 PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
4. The PPG¹ advises that awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicants costs claim is made primarily on substantive grounds though also relates to procedural issues.
5. The applicants seek a full award of costs on the basis that the Council has behaved unreasonably in refusing an application which was fully supported by evidence; that the Council has not refuted that it took an inconsistent approach to decision making and inferred a matter of planning judgement to its policy

¹ Paragraph: 031 Reference ID: 16-031-20140306

- which did not exist; that the Council delayed development which should clearly have been permitted having regard to the development plan and the material considerations of other Inspector's decisions; That the Council deliberately concealed at the application stage the fact that it had granted permissions under delegated powers without imposing the restrictive condition; delaying the issue of the decision for 12 weeks following the committee date.
6. The evidence makes it clear that members taking the decision were advised of the prior appeal decisions. The Council stated in its complaint response to the applicants that it was not material for the Council to have been made aware that they were currently approving applications for housing development within the AONB without imposing a second homes policy but instead only that the Council had recently lost three separate appeals in relation to Policy H14, two where the Council sought to impose conditions and one where a second homes condition was appealed.
 7. The applicants assert that the planning committee was not aware of all the facts in the decision making process whereas the Council contend that the appeal decisions were referred to but that it is not standard practice to discuss the outcome of other delegated decisions and the Committee were fully aware of the material planning considerations that were relevant to the case.
 8. Whilst I note that the Council say it is not routine to advise the committee of other submissions as a matter of course, in the circumstances pertaining to this case it would have given a fuller picture. I have no substantive evidence that the Council deliberately sought not to disclose those other permissions, but it cannot be known whether if members had been advised of those other consents issued without the same condition that it would have resulted in a different outcome.
 9. The PPG makes it clear that costs cannot be claimed for the period during the determination of the application, but it also makes clear that behaviour in the planning process can be taken into account as to whether costs should be awarded in relation to the appeal. In this regard I find that the Councils' explanation for not outlining those other permissions was unconvincing and on the evidence before me it is very likely that it directly led to the need for the condition to be appealed.
 10. The Council stated in their reasons for refusal that the proposal to remove the condition would *"...by means of the potential for vacant properties would result in harm to the character and vitality of West Lulworth, contrary to Policy H14 of the emerging Purbeck Local Plan. The Council considered that as the Plan was at an advanced stage of preparation, that this Policy could be given weight, in accordance with Paragraph 48 of the NPPF, and that the condition was reasonable and necessary in order to maintain the character and vitality of West Lulworth, in accordance with Paragraph 55 of the NPPF². The proposal was therefore contrary to Policy H14 of the emerging Local Plan, and paragraphs 48 and 55 of the NPPF"*.
 11. The planning decision separately examines the reasons whether the weight which was given to an emerging policy was appropriate. Inspectors in the three decisions referred to, took the view that the policy was not at a sufficiently advanced stage to be relied upon, these decisions date from November 2019.

² National Planning Policy Framework

The Council in their statement took an opposite view that the Purbeck Local Plan Review Examination had progressed sufficiently far to be relied upon.

12. Pivotal to that progress was the issue of the Inspectors Post hearings note dated March 2020 which indicated that *"The submitted Plan proposes a policy (policy H14) to restrict new housing permitted in the Area of Outstanding Natural Beauty, on small sites (as set out in policy H8) and on rural exception sites (as set out in policy H12) to be occupied only as a principal residence. The policy is intended to manage the number of new homes which are built as, or become, second homes in order to ensure the housing needs of local people are met, create a good balance and mix of housing to allow people to live and work locally and strengthen the community and local economy. ... However, I am not persuaded that, in order to achieve the outcome sought, it is necessary, reasonable or proportionate to subject replacement dwellings to the restriction of the policy. The replacement of one unrestricted dwelling by another unrestricted dwelling would have no impact on the existing mix and balance of housing. Based on the evidence therefore, I am not sufficiently satisfied that including replacement homes in the policy is justified. Consequently, further amendment is necessary to the suggested Main Modification (MM101) to policy H14 in this respect.*
13. However, this stage was well after the decision had been issued and could not have influenced the actual decision made by the Council. The Council state that with the modification the plan is likely to be capable of being found legally compliant and sound. However, at this point in time the plan has not progressed further, and the revised schedule of modifications has not yet been published. Neither the Council, nor I, can be certain what the modifications to Policy H14 will be. Moreover, modifications will be subject to further consultation and the consideration of responses and the timing and nature of the modifications, nor the timing of the progression of the plan timescale to adoption are certain. In those circumstances the position of the Council, in maintaining the case for the retention of the condition, amounts to unreasonable behaviour.
14. Moreover, Dorset Council resolved to refuse the application, contrary to officer recommendation on 4th December 2019 yet it took until 28th February 2020 to issue a decision notice. The Council state that during this period a formal written complaint had been lodged and that the Council was reconsidering its position. Notwithstanding the internal complaint process, which is a separate matter, it should not have influenced the timing of issuing the decision notice following the planning committees' resolution. The applicant was entitled to a prompt decision following the committee meeting and this delay was unreasonable. It also meant that the ability for the applicants to progress matters was further hindered. This also amounts to unreasonable behaviour.

Conclusion

15. Mindful that the condition was imposed based on an emerging policy in July 2019 much earlier in the process of the emerging plan coupled with the fact that the final iteration of the emerging policy is still not yet certain, I consider the Council were unreasonable in pursuing the retention of the condition.
16. I quite understand the members concern in seeking to *'maintain the character and vitality of West Lulworth'* and to resist the increase in second homes in the area in order to limit the potential for vacant properties. However, under the

circumstances of this particular policy and the progression of the plan the basis for that position has not reached a definitive stage such that it could be fully relied upon for decision making. However well meaning, the overturning of the officers' recommendation was by members, the removal of the condition was unreasonable on the evidence before them and it was equally unreasonable for the Council not to inform members that it had, under other powers, separately approved applications in the AONB without the imposition of the same condition.

17. Taking all of the above into account I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

18. 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 Willton Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicants are 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.

J Wilson

INSPECTOR