
Costs Decision

Site visit made on 30 November 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2020

Costs application in relation to Appeal Ref: APP/D1265/W/20/3257683 Land off Roman Road and Spa Road, Weymouth DT3 5JH

- 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 Raymond McIntyre, Devon & Dorset Properties Ltd for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for the erection of 13 No. houses and 6 No. flats.
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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 Council were considering the application for some considerable time during which negotiations were undertaken regarding the scale of the development and its detailed design. Whilst this process was not so fast as the appellant may have hoped, it ultimately resulted in a recommendation to grant planning permission.
4. The appellant confirms that at a meeting on 3 December 2019 there were still outstanding design concerns, so there is nothing to suggest that a positive recommendation could have been made earlier than the committee meeting that was scheduled in March. Following the cancellation of that meeting due to the Covid-19 pandemic the application was reported to a virtual committee meeting. Whether or not that was the earliest meeting that could have considered the application, these latter delays were due to unprecedented circumstances that do not point to unreasonable behaviour. In any case, they did not in themselves cause wasted expense in the appeal process.
5. The Council officer's report identified a conflict with the development plan. However, it went on to recommend that the proposal benefitted from the presumption in favour of sustainable development set out in the National Planning Policy Framework (the Framework) due to the Council's housing land supply situation. There is, therefore, no substantive evidence that the Committee Members were not fully aware of this material consideration.
6. Having considered relevant material factors and, given the advice provided in the committee report as to the acceptability of the proposal, I see no particular

reason why the committee report should have also recited other appeal decisions relating to sites outside the defined development boundary. There may be no explicit reference in the report to Framework Paragraph 119 which encourages Local Planning Authorities to identify and help bring forward land that may be suitable for meeting development needs. However, having been excluded from the defined development boundary, consideration of its suitability was being assessed through the planning application process. There is no requirement in Paragraph 119 for Councils to permit housing on all publicly owned land and there is no substantive evidence that key material considerations were missing from the advice given to the Committee.

7. The site is in the conservation area. That does not automatically mean that development proposals should be rejected, which would have been evident to Committee Members from the recommendation to grant permission. The reasons for refusal accurately describe the site as undeveloped green space within the conservation area and records the Council's judgement that it makes a positive contribution to its character and appearance. There is no substantive evidence that the Committee Members were not sufficiently aware of the site and its surroundings to enable them to reach that conclusion and I have broadly agreed with their assessment. The harm identified is not based upon a vague generalisation.
8. Having reached that point, it is then a matter of planning judgement as to whether the benefits of the proposal outweigh the harm identified. On the basis of the evidence before me, I have found against the Council in that regard, however, given the advice set out in the committee report, I have no reason to conclude that the Committee Members did not have all material considerations in their minds, including the policies of the Framework. Having found harm to a designated heritage asset, the Council's decision was not unreasonable.
9. The reasons for refusal indicate that the Council has declared a climate emergency and suggest that this somehow contributes to the proposal being contrary to Policy SUS2 of the West Dorset Weymouth and Portland Local Plan 2015. Quite how the declaration would have any bearing on Policy SUS2 which, primarily, relates to the distribution of development across the development plan area, is somewhat unclear. However, for reasons given in my main decision, there is a clear conflict with this policy and the decision notice unambiguously cites that conflict as a reason for refusal.
10. In a Costs Decision relating to an appeal on Land to the East of Hetherly Road, the Council's evidence was found to be insufficient to substantiate its reasons for refusal. While the appeal related to land being disposed of by the Council, the policy in dispute required evidence surrounding an alleged shortfall in open space. That is not the same as the judgement required in this case weighing benefits against harm to a heritage asset and so the findings of that Inspector do not influence my decision in this case.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Bale

INSPECTOR