

Costs Decisions

Site visit made on 17 November 2020

by Mr Martin Allen B.Sc (Hons), M.Sc, M.R.T.P.I

an Inspector appointed by the Secretary of State

Decision date: 8 January 2021

Costs application A in relation to Appeal Ref: APP/B1740/W/20/3255755 Victoria Cottage, Victoria Road, Lymington SO41 0NL

- 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 and Mrs S Dench for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of planning permission for development described as "Proposed new distinctive and contemporary self build modern dwelling house on the site to the west of the existing Victoria Cottage including altered existing and new pavement crossings, associated hard and soft landscape design enhancement works, west and north hard and soft boundary landscape treatments to enhance the street scene."
-

Costs application B in relation to Appeal Ref: APP/B1740/W/20/3256695 Victoria Cottage, Victoria Road, Milford-on-Sea SO41 0NL

- 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 and Mrs S Dench for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of planning permission for development described as "Demolish existing dwelling and re-build it as a new build dwelling; sever plot and new build a new self build dwelling, alter existing pavement crossing and create enlarged crossing, new hard and soft landscaping".
-

Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Reasons

3. 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.
4. Both applications for costs in part rely on procedural matters in the way in which the Council considered the planning applications. The applicant cites that the Council has failed to provide a consistent, positive or proactive approach to the determination of the planning applications. In doing so, it is alleged to have failed to give weight to material factors, including the acceptability of the principle of development at the location, as well as a failure to deliver to deliver

- sufficient new homes, which it contended is evidenced in the Housing Delivery Test results.
5. However, it is clear from the Council's Committee Reports that other issues, that included the principle of development, as well as the impact on residential amenities and highway safety were considered as part of the determination of the applications. The Committee Reports concluded that the principle of development was acceptable at this location, that there would be no acceptable effect on residential amenities or highway safety. This clearly demonstrates that whilst the schemes were considered acceptable in respect of these matters, the Council's concern in respect of the effect on the character and appearance of the area warranted, in the Council's opinion, refusal of planning permission in both cases. This is a planning judgement that the Council was entitled to make.
 6. Furthermore, in respect of the presumption in favour sustainable development as set out in paragraph 11 of the National Planning Policy Framework, the Council refers to housing provision within the Committee Reports and whilst giving significant weight to the emerging development plan, highlights that on its adoption a five-years supply of deliverable sites will be achieved. Whilst I note that at this time that plan had not been adopted and also there is no reference to the Housing Delivery Test results, even if the presumption was engaged, I am not convinced that the benefit of a single dwelling in each case would have been sufficient to outweigh the harm that was alleged by the Council and which I have found when making my decisions on the appeals. Thus, I am not convinced that this matter would have resulted in the grant of planning permission or that the appellant has been put to unnecessary expense by pursuing the appeals.
 7. The applications for costs also rely on substantive matters relating to the planning merits of the appeals. The applicant contends that the Council has failed to adequately and objectively justify its stance in respect of the proposals effect on the character and appearance of the area. However, the Committee Reports, on which the Council relies in support of its case, provides sufficient justification for the decision taken and outline the harm that it is contended would result from the proposals. Notwithstanding that no harm is identified in relation to heritage assets, the effect on the character and appearance of the area in general is a legitimate planning matter which the Council are at liberty to have regard to.
 8. I note that there is reference to a lack of engagement with the applicant, including a lack of response to complaints made, withholding of information and delay in publishing information to the planning register. However, these matters are outside of the appeal process and are matters for the Council. As such, these have little bearing on my decision.
 9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal processes has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified in either case.

Mr Martin Allen

INSPECTOR