
Costs Decision

Hearing Held on 16 December 2020

Site visit made on 17 December 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Costs application in relation to Appeal Ref: APP/B9506/W/20/3258464 Paddock View, Bashley Road, Bashley, New Milton, Hampshire BH25 5RY

- 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 New Forest National Park Authority for a full award of costs against Redcliffe Gardeners Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a horticultural dwelling without complying with condition No 3 attached to planning permission (allowed on appeal) Ref T/APP/B1740/A/94/239628/P5 (Authority Ref NFDC/94/54429), dated 16 May 1995.
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Decision

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

The Submissions

2. The National Park Authority's case and the response from the appellant were made in writing. No additional points were made orally at the hearing.

Reasons

3. 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.
4. The Authority claims that the appellant pursued an appeal of an application that was clearly contrary to planning policy. It is also claimed that the application did not address the reasons for an appeal¹ being dismissed in September 2019 for substantially the same proposal.
5. The PPG indicates that appellants will be at risk of an award of costs being made against them if development is clearly not in accordance with the development plan, and no other material considerations are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence. The PPG also indicates that an award of costs may be made when an appeal follows a recent appeal decision in respect of the same or very similar

¹ APP/B9506/W/19/3223195

- development, where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
6. The previous appeal decision sets out the reasons for dismissing the appeal and that proposal's conflicts with the development plan. Specific matters needed to be addressed, or new material considerations supported by evidence had to be raised, for there to have been a reasonable prospect of a subsequent application succeeding.
 7. Although additional marketing was undertaken for the proposal that I considered, the reasons for dismissing the earlier appeal had not been fully addressed. No attempts to sell the dwelling had been made and the methods of marketing were not materially wider than undertaken previously. The proposal was plainly in conflict with the development plan. Although the appellant was entitled to disagree with the former Inspector's findings, much of the appellant's case reiterated points advanced previously. It did not feature compelling new evidence which indicated that the outcome of the appeal that I considered should have been different to the previous one.
 8. The appellant put forward that the empty homes premium on their Council Tax bill was a new consideration; however, that had no bearing on the main issue of the appeal. Although the appellant suggested wording for a condition in an attempt to avoid the appeal being dismissed, the condition had not been fully formed. It lacked precision and thus failed to satisfy all the tests set out at paragraph 55 of the National Planning Policy Framework.
 9. The appellant says that the Authority could have declined to determine the application subject to this appeal under the provisions of Section 70A(1) of the Town and Country Planning Act 1990 as amended. Whilst that may be the case, it was the appellant's decision to appeal knowing that the Authority had concluded that deficiencies from the previous application persisted.
 10. I am not satisfied that the appeal had a reasonable prospect of succeeding as the development was patently not in accordance with the development plan and no compelling new considerations were identified which indicated otherwise. This constitutes unreasonable behaviour and the Authority has thus been faced with the unnecessary expense of defending their decision at appeal. A full award of costs is therefore justified.

Costs Order

11. 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 Redcliffe Gardeners Ltd shall pay to the New Forest National Park Authority, 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.
12. The Authority is now invited to submit to Redcliffe Gardeners Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mark Philpott

INSPECTOR