
Costs Decision

Inquiry Opened on 1 December 2020

Site visits made on 20 November and 9 December 2020

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19th January 2021

Costs application in relation to Appeal Ref: APP/D1265/W/20/3256221 Land South-West of Blandford Forum By-Pass, Blandford St Mary, Dorset

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bellway Homes (Wessex) Ltd for a full award of costs against Dorset Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the approval of details required by a condition attached to a grant of outline planning permission.
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Preliminary Matters

1. The appellant made their costs application in writing, towards the end of the Inquiry. I gave the Council a period of time after the Inquiry closed to respond, in writing, and then allowed the appellant a further short period for a final written response. As indicated below, I have attached these written submissions to my parallel decision on the appeal as Inquiry Documents.

Decision

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

The submissions for the Appellant

3. The submissions for the applicant were made in writing¹.

The response by the Council

4. The written response from the Council was made in writing².

The final response by the Appellant

5. The appellant's final response was made in writing³.

Reasons

6. The PPG⁴ tells us that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

¹ ID14

² ID15

³ ID16

⁴ Planning Practice Guidance

7. One of the aims of the costs regime, we are told, is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through unavoidable delay.
8. In setting out examples of the type of behaviour that may give rise to a substantive award against a local planning authority the PPG cites; preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; acting contrary to, or not following, well-established case law; and refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage.
9. In their application for costs, the appellant gives a series of examples of what is seen as unreasonable behaviour on the part of the Council. The Council, in turn, has responded to those examples. However, there are two main points, in my view, that go to the heart of the matter.
10. The first relates to the grant of outline planning permission and the baseline. Put simply, the Council granted outline planning permission for up to 350 dwellings on the site, in line with the clear expectations of Policy 16 of the Local Plan. As I have set out in my parallel decision on the appeal, to have done so, the Council must have satisfied itself that 350 dwellings could be satisfactorily accommodated on the site, otherwise it is difficult to understand why outline planning permission was granted in those terms. It is clear to me from the evidence put forward in advance of, and during, the Inquiry, that the Council sought to row back from that. On the face of it, that is unreasonable behaviour.
11. That unreasonable start point fed into the way in which the baseline for consideration of the details put forward was handled. The Council did not appear to have started from the position that 350 dwellings could be satisfactorily accommodated on the site but treated the use of 'up to 350' as an invitation to suggest that the baseline could be significantly less than 350. The alternative scheme the Council put forward at the Inquiry is an example of that line of thinking. In that, the Council appeared to be engaged in the design of a layout it would find acceptable, without taking the need to accommodate 350 dwellings as a constraint. That is demonstrably unreasonable.
12. Rather, the Council should have been asking itself whether the details submitted were an acceptable way in which 350 dwellings could be accommodated on the site, bearing in mind that the main accesses, and the spine road connecting them, were fixed by the grant of outline permission, and details pertaining to the lower, north-east section of the site had already been approved. That leads me to my second, and main point in relation to unreasonable behaviour.
13. In assessing the details, the Council set great store on the 'prominence' of the development, the way the lime tree roundel would be treated, and the injurious impact that would result on the settings of the nearby AONBs. Visualisations were produced that purported to show these impacts.

14. However, it is very plain from analysis of the visualisations, informed by site visits, that the scheme that would result from the submitted details would not be unduly prominent, and the treatment of the lime tree roundel would be respectful. From the viewpoints chosen by the Council as representative, and bearing in mind the correct baseline, impacts on the setting of the AONBs would be marginal in relation to the Dorset AONB, and well within reasonable bounds in relation to the Cranborne Chase and West Wiltshire Downs AONB. I cannot see how the visual evidence produced by the Council can remotely justify the conclusions that were drawn. That is unreasonable behaviour.
15. Bringing those points together, I am of the view that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; acted contrary to, or not followed, well-established case law; and refused to approve reserved matters when the objections related to issues that should already have been considered at the outline stage. In simple terms, the submitted details should have been approved, and the appellant has had to pursue an appeal that should not have been necessary.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full 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 Bellway Homes (Wessex) Ltd, 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.
18. 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.

Paul Griffiths

INSPECTOR