



Costs Decision

Hearing Held on 16 & 17 December 2020

Site visit made on 23 December 2020

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 1 February 2021

Costs application in relation to Appeal Ref: APP/W3330/W/20/3246143 Field located to the west of Station Road and to the south of Home Orchard, Hatch Beauchamp

- 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 West of England Developments (Taunton) No2 Ltd for a full award of costs against Somerset West and Taunton Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of 12no. dwellings with associated access, landscaping and drainage works.
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Decision

1. The application for an award of costs is refused.

The submissions

2. The appellant's application for costs was submitted in writing, followed by a written response to the Council's rebuttal. The written application was made on substantive grounds and on the basis that, in relation to the planning merits of the appeal, the behaviour of the local planning authority has led to unnecessary and wasted expense.
3. The written application was briefly supplemented orally at the Hearing and the points made can be summarised as follows: that the Council's first and second reasons for refusal were un evidenced; that the transcripts of the Committee meeting show limited consideration given to matters of design; that the Council has shown inconsistency in its decision-making; and that the Council's decision has delayed development and that costs should be awarded in full.
4. The Council submitted a response to the appellant's costs application in writing. The following additional points were made orally during the Hearing: that bungalows involve higher build costs and the proposal would not represent the minimum of market housing; that the weight to be applied to the viability assessment rests with the decision maker; that the Council's Member's gave good and reasonable grounds for their decision based on the officer report and had acted in a reasonable way.

Reasons

5. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party which has behaved

- unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. In this case, the Officer's report included a recommendation for approval. It is not unreasonable for the Committee Members to have reached an alternative conclusion, that is, provided evidence to substantiate each reason for refusal was given and that vague, generalised or inaccurate assertions had not been introduced. In my opinion, the transcripts of comments made during the meeting do not reflect of the full substance of the Council's position, which was set out clearly within its Statement of Case and evidence given at the Hearing.
 7. The Council's first reason for refusal refers to the development as being for twelve dwellings in the open countryside. In isolation, the Council's first reason for refusal deals with the proposal being contrary to the settlement strategy. The second reason, more specifically, reflects the nature of the proposed development as being for RES affordable housing in the countryside. The first and second reasons are inextricably linked. Through its Statement of Case along with evidence put forward during the Hearing, the Council provided an objective analysis of the specific areas of concern and substantiated its first and second reasons for refusal.
 8. I do not agree that the Council considered CS Policy SP1 in isolation, rather as the proposal failed to satisfy Policy DM 2, it inevitably did not find support through the overarching spatial and sustainable development policy. As will be seen from my decision letter, in concluding that the development would not satisfy the RES policy, I too found that the proposal would be Council's overarching settlement strategy.
 9. The third reason for refusal related to matters of design, character and appearance. Through various iterations the appellant has evidently sought to address concerns raised during the application process. Nevertheless, it is apparent to me that the issue of design was not wholly resolved, rather, in weighing up the benefits of the scheme, the Council's officer was content to accept the design and layout. I do not wish to speculate on how the committee meeting unfolded, nor the time spent discussing specific matters. The issues of character, appearance and design run through various local and national policies, including CS Policy DM 2, indicating that RES development and good design are therefore not mutually exclusive. Furthermore, within their Statement of Case, the Council was able to articulate its concerns in a specific way that tied into development plan policy. On this basis, the Council was able to substantiate its third reason for refusal.
 10. On the matter of planning policy, I do not consider the Council has misapplied or misdirected itself, nor failed to have regard to the development plan policies that are most important in determining the appeal. I do not agree that the Council specifically rejected the principle of a rural exception site per se. The Council has clearly assessed the proposal on the basis that some open-market cross subsidy is provided for in the Framework. Without a definition of what a 'small proportion' or 'proportion' in respect of open-market cross subsidy for RES schemes, the Council took account of various factors, including percentage of affordable to open-market, in coming to a view that the level of open-market would be excessive. The Council were entitled to take account of their SPD guidance; even if the wording didn't directly align with the Framework, the substance of the guidance did.

11. That the Council's officers agreed with the appellant's viability assessment and its conclusions is noted. The Committee Members were not duty-bound to accept the report nor the officer recommendation. The evidence I heard during the Hearing persuaded me to the view that the level of open-market cross subsidy would not be the minimum necessary provision. It will be seen from my decision letter that I agreed with the Council and found that the proposal would be in conflict with CS Policy DM 2 and paragraph 77 of the Framework on that basis.
12. I have borne in mind that the Council has granted RES development outside of settlement boundaries; and in circumstances when there was an open-market provision in excess of 50%. I do not know the specific planning considerations in those cases; to my mind, those examples illustrate that under different circumstances, the Council can be willing to accept RES development for affordable housing. In this instance, discussions on conditions or clauses within a S106 would not have satisfied what ultimately were in-principle concerns with the location and design of the development. It was not unreasonable for the Council's officer to defer to the direction of Committee Members' thinking, especially if the planning judgement, as in this case, was a finely balanced one.
13. I am aware that the appellant worked proactively with the Council throughout the application process and that the Committee Members' decision, and subsequently my own, would be a disappointment. However, all things considered, I do not find the Council has prevented development that should have been approved nor has it acted unreasonably.

Conclusion

14. In conclusion, unreasonable behaviour has not been demonstrated. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified.

H Porter

INSPECTOR