
Costs Decision

Virtual Hearing Held on 17 and 18 December 2020

Site visits made on 13 December 2020 and 5 January 2021

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 29th March 2021

**Costs application in relation to Appeal Ref: APP/D1265/W/20/3254594
Land West of Bournemouth Road (at E 389797 N 104244), Charlton
Marshall, Dorset.**

- 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 L Dungworth of Hallam Land Management for a full award of costs against Dorset Council.
 - The hearing 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 outline planning permission for up to 70 dwellings, open space and landscaping (including children's play and community orchard), new vehicular and pedestrian access, parking, engineering (including ground modelling and drainage) works and infrastructure (including cycle and pedestrian connections).
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Decision

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

Procedural matters

2. The applicants' case and the Councils' response were made in writing in advance of the hearing, neither party added to those submissions at the hearing. The submission is for a full award of costs.

Reasons

3. The Planning Practice Guidance (PPG) makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
4. The applicants contend that the Council has behaved unreasonably both procedurally and on a substantive basis for the following reasons:
 - a lack of co-operation with the applicants, delay in providing information and unreasonably failing to determine the planning application;
 - by introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work which would not otherwise have arisen;
 - preventing development which should clearly have been permitted; and

- refusing to enter into pre-application discussions or to provide reasonably requested information when a more helpful approach would probably have resulted in the appeal being avoided or the issues being narrowed.

I shall deal with these in turn:

Lack of co-operation, delay in providing information and failing to determine the planning application

5. The PPG advises that if it becomes clear that the local planning authority will fail to determine an application within the time limits, it should give the applicants a proper explanation. It requires that it should explain the reasons for not reaching a decision within the relevant time limit, and what the reasons for not granting permission would have been.
6. The Council set out in its statement of case (SOC) its reasons why it considers the permission would not have been granted had the application been determined by the Council. The SOC is silent as to why it failed to determine the application within the statutory timescales, or the agreed extended period. It was not until its costs response was any explanation given, and even then, reasons focused on delays after the agreed extension of time had expired.
7. There is evidence to confirm that the Council was given notice of the intention to appeal along with correspondence which made requests for information. Unexpected delays due to the Covid pandemic and staffing delays are cited by the Council though these delays relate mainly to the period after the agreed extension of time period had expired. The Council whilst acknowledging that the delay was regrettable did not provide an explanation for the delay in handling the planning application.
8. However, the Council has set out in its SOC and at the hearing the reasons why the proposed development would be harmful and why planning permission was not granted. For the reasons set out in the appeal decision, I agree. As a result, notwithstanding whether or not the Council's handling of the planning application was unreasonable, there was no wasted or unnecessary expense in connection with the appeal process, which is the basis upon which I can determine this application.

Fresh and substantial evidence at a late stage necessitating extra expense

9. The applicants assert that additional and, in some areas, contrary evidence was introduced by the Council in the SOC. These matters include policy concerns, affordable housing need, conservation matters, sustainability, and the cumulative impacts of growth, matters not having previously been articulated to them.
10. The Council met with the applicants in late 2019 and again in February 2020 to discuss consultee responses. Concerns regarding the proximity to the Charlton Marshall Conservation Area (CA) and the overprovision of housing in the light of development plan policy as well as the impact of the development on the countryside were said to have been discussed and the Council says it alerted the applicants to an improved Housing Land Supply situation and to their reassessment of the conservation aspects of the proposal.

11. The applicants account of the February 2020 meeting is rather different; they say the Council did not raise any doubt about conservation matters as consultation responses had, prior to that point, been favourable.
12. The applicants emphasise that matters on which the Council had taken a different position upon could not have been discussed in February as they were not even presented until June 2020. The applicants also point out that a second policy response was published after the submission of the appeal in June 2019; this led the appellants to bolster evidence. Though I note that this predates the Councils SOC there is no explanation as to why responses that favoured the applicants were updated to express less favourable views.
13. I do not have before me any meeting notes/record of the discussions which took place at the February meeting from either party. Follow up letters from the applicants related mainly to draft planning conditions and the lack of technical objections to the proposal including from landscape and conservation officers. I have no evidence before me that would indicate that the applicants email response was challenged by the Council or that any misunderstandings were corrected and it appears, at that time, the applicants were reasonably proceeding on the understanding that their scheme may be recommended favourably.
14. It was accepted by the Council during the hearing that it ultimately drew a different conclusion to that indicated in earlier consultation responses. A change in position was, quite understandably, frustrating for the applicants. In a non-determination appeal the case of the Council is rarely set out in full until the production of a SOC. I am satisfied that the Council provided a reasoned argument as to why it considered the proposal would be contrary to development plan policy and why, in its opinion, the development would be harmful in respect of the setting of the CA. It did so in accordance with the appeal timetable and, for the reasons set out in my appeal decision, I agree that the conclusions reached by the Council were reasonable.
15. The applicants also indicate an apparent about turn on affordable housing. On the evidence before me, I do not see that to be the case. The overall need for affordable housing within the district was not disputed, with discussion at the hearing related to establishing the need in the settlement of Charlton Marshall.
16. I acknowledge the frustrations of the appellant in the timing of the provision of information, however these are not matters relating to the appeal process. The timing of the Councils' appeal statements adhered to the normal appeal timetable and the SOC was clear on the issues the Council considered would have formed the basis of a refusal of planning permission. It is clear that the content of the SOC led to additional work being carried out on issues not previously known to the applicants. The key question is whether they led to the applicants incurring wasted expense in the appeal process in addressing them.
17. It is clear that the position of the Council changed on some matters and that other, previously unmentioned issues were identified within the SOC. Whilst the raising of these issues with the applicants was later in the overall process than ideal, I am satisfied that they related to matters which were legitimately policy related and it would, in any event, have been necessary for the applicants to address them. As such they did not cause unnecessary or wasted expense in the appeals process.

Preventing development that should have been permitted

18. The consideration of any planning application involves matters of judgement which at times can be finely balanced. The impact of development upon the CA and its setting are material factors with both development plan and the National Planning Policy Framework considerations being relevant. It was legitimate for the Council to consider these issues.
19. It will be seen from the decision that I agree with the Council in respect of: the application of development plan policies; the location of development; the impact on the character and appearance of the area; and the effect on heritage assets. I found that the Council properly applied policies of the development plan albeit these matters were not apparent until after the applicants had lodged their non-determination appeal. The Council did not prevent development proceeding that should have been permitted.
20. In taking the position that it did, the Council identified the issues material to its case and the applicants subsequently prepared their response. Whilst the applicants considered this to be late in the day it did meet the appeal timetable. I am not persuaded that it caused unnecessary expense on the part of the applicants, as the matters to which they refer to as additional information would need to have been addressed in any event.

Requests for information which would have avoided an appeal

21. The applicants highlight that initial positive discussions with the Council, which they say are evidenced by revisions to the scheme to reduce the number of dwellings and revisions to the masterplan, were understood to support a positive recommendation to the Committee.
22. The applicants argue that at the time of lodging the appeal there were no technical objections outstanding however I have no conclusive evidence on this matter. The positions of the Council and the applicants clearly differ, though the accounts of precisely what discussions took place at the February 2020 meeting are undocumented. Whilst better dialogue between the two parties may well have narrowed the issues, on the evidence before me, that is by no means certain. I am satisfied that the positions of the Council and the applicants were sufficiently far apart so as to make any meaningful agreement between them very unlikely and an appeal almost inevitable.

Conclusions

23. I therefore conclude that unreasonable behaviour resulting in unnecessary expense in the appeal process, as described in the National Planning Practice Guidance, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

J Wilson

INSPECTOR