



Costs Decision

Hearing (Virtual) held on 23 March 2021

Site visit made on 23 March 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2021

Costs application in relation to Appeal Ref: APP/D1265/W/20/3257096 5-7a Edmondsham Road, Verwood, Dorset BH31 7PA

- 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 Fayrewood Property Limited for a full award of costs against Dorset Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission to demolish the existing buildings and erect a dementia care home with new vehicular access and parking provision (revised scheme).
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Decision

1. The application for a full award of costs is refused.

The submissions for Fayrewood Property Limited

2. The costs application was made in writing. The following additional points were made orally at the Hearing.
3. The appellant had worked with the Council in accordance with the advice of the National Planning Policy Framework (the Framework) on pre-application discussions and there was a general feeling that 3 storeys could be accommodated. The concern over the impact on neighbours with the previous proposal was acknowledged, but the pre-application discussion was quite positive. The planning officers recommended approval as both they and consultees felt that there was no reason to refuse the application given the existing planning policy.
4. The Planning Committee can make a decision other than in accordance with the officers' recommendation. However, when refusing an application, there is an expectation that the local planning authority does so with evidence to substantiate its concerns and in accordance with the development plan. The reason for refusal cites 'form' but there is no reference to form within Policy HE2 of the Core Strategy. It is still unclear why the proposal was refused given the recommendation to approve.

The response by Dorset Council

5. The Council's response was made orally at the Hearing. The elected members were entitled to take a different view to the officers and did so on this occasion. It is the very nature of the planning system that members can and often do get involved in planning decision-making and they are entitled to refuse planning applications on matters in which they are not expert provided they can justify that decision at appeal.

Reasons

6. National Planning Practice Guidance (PPG) advises that, regardless of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
7. I acknowledge that, from the evidence before me, the planning officers' pre-application advice was generally positive. I have no reason to doubt that this advice was given in good faith and the officers' recommendation to the Planning Committee reflected that advice. The officers' report set out how the revised proposal was considered to overcome the previous reasons for refusal. The officers concluded that the proposed scheme would not have a demonstrable impact on the character of the area that would warrant a refusal and that, on balance, the standard of design was not so inadequate as to form a reason for refusal.
8. The minutes of the Committee meeting indicate that the proposal was explained to the members with a visual presentation including photographs. The members were advised of comments from interested parties and consultees, including those from the Dorset Social Care Team. The effect on character and appearance is a matter of planning judgement. Having had the proposal and information presented to them, the members were entitled to reach the conclusion that the effect of the proposal on the character and appearance of the area was not acceptable. In doing so the members gave greater weight to the concerns of local residents than to the officers' advice.
9. It is not unreasonable in itself for elected members to reach a decision other than in accordance with the planning officers' recommendation. The Council provided an appeal statement and has justified the members' decision in relation to the design of the scheme through the appeal process. The Council has therefore not acted unreasonably in this respect.
10. The elected members were also entitled to reach their own conclusion on the adequacy of the living conditions of the future residents of the care home. Although the members are not necessarily trained experts in care home requirements or patient care, members gave more weight to the concerns of the Dorset Social Care Team on a matter the officers report acknowledged to be a balance. Again, the Council has provided support for this decision through the appeal process by referring to the Framework in the absence of relevant development plan policies.
11. I therefore consider that the Council did not behave unreasonably in its determination of the planning application. The appellant chose to exercise their right of appeal rather than submit a further revised application. As parties normally meet their own expenses they have not incurred unnecessary or wasted expense.

Conclusion

12. I therefore conclude, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for a full award of costs is thus refused.

Martin Small INSPECTOR