

Costs Decisions

Hearing Held on 24 March 2021

Site visit made on 25 March 2021

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2021

Costs application 1 in relation to Appeal Ref: APP/F0114/W/20/3256285 Site Of Former Ministry Of Defence Offices Warminster Road, Bathwick, Bath

- 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 Hardrock Developments LTD for a full award of costs against Bath & North East Somerset Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of 42no. new dwellings and 2no. new blocks of apartments to provide a total of 70 new homes on part of the former MOD site at Warminster Road (revision to consented development).
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Costs application 2 in relation to Appeal Ref: APP/F0114/W/20/3256292 Additional Development Area, Holburne Park, Bathwick, Bath

- 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 Hardrock Developments LTD for a full award of costs against Bath & North East Somerset Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 8 additional dwellings, landscaping, car parking and associated works on land adjacent to Holburne Park, Warminster Road, Bath.
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Decision

1. Both applications for costs are refused.

The submissions for Hardrock Developments LTD

2. The applicant is of the view that the Council have acted unreasonably in the decision-making process in two main ways. Firstly, that the decision of its Planning Committee was contrary to that recommended by the Officer, with no justified reasoning. Secondly, that the Council introduced new evidence as part of the appeal process.

The response by Bath and North East Somerset Council

3. The respondent is of the view that the decision was adequately justified and that the submission of updated information was necessary and relevant.

Reasons

4. The applications for costs relate to two linked appeals that were considered collectively in agreement of the main parties.

5. 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.
6. I fully acknowledge that the Committee came to a different view of the proposals to that recommended by the Officer. However, this I find nothing inherently unreasonable in the Council's Planning Committee reaching a different conclusion to its officers. Indeed that is their right to do so, if the decision is justified on planning grounds. I am satisfied that the decision reached by the Committee was a matter of planning judgement made at a particular point in time, based on the information before them. Furthermore, the weight afforded to any conflict with the Development Plan and other identified material considerations is a matter for the decision-maker. I have no reason to consider that the Committee ignored any material considerations raised by the applicant.
7. The Committee refused the appeal proposals because the intended developments do not comply with policy CP9 of the Bath and North East Somerset Council Core Strategy, 2014, in regard to the level of proposed affordable housing provision. As detailed in my Decision I agree with this conclusion. Furthermore, the weight to place on the viability information is a matter for the relevant decision-maker. It is clear the Committee placed a different weight on that submitted than the Officer, this is not unreasonable behaviour. I have no evidence that the Council took the decision to refuse the applications on the basis of any political motivation.
8. I fully acknowledge that further to the COVID-19 pandemic, the appeals have taken a significant time to be determined. However, I have no reason to consider this delay was due to any unreasonable behaviour of the Council. I also have no persuasive evidence to determine that the Council took advantage of the situation, forcing the applicant to submit revised proposals in the interim.
9. At the time of the Council's decision there was uncertainty with regard the likely effect of COVID-19, in my view it is wholly reasonable that given the time which has passed since the decision, that either party should provide updated positions as to whether that uncertainty was borne out in reality. As such I do not consider this to amount to unreasonable behaviour.
10. For the reasons given above, I do not find that unreasonable behaviour from the Council, as described in the PPG is evident. Consequently, it is not necessary for me to consider whether wasted expenditure has occurred.
11. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

M Scriven

INSPECTOR