



Costs Decision

Site visit made on 17 May 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Costs application in relation to Appeal Ref: APP/D1265/W/21/3267101 82 East Street, Beaminster DT8 3DT

- 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 Miss Hughes for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for demolition of the existing bungalow and erection of 5 no. new dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. Contrary to the recommendation from officers, and following negotiation and revisions to the scheme, the application was refused because the site is outside the defined development boundary and for highway safety reasons. Council members are not bound by the recommendations of their officers. However, where they depart from those recommendations, it is important that any reasons for refusal stand up to scrutiny.
4. Highway officers had raised no objection to the proposal. Despite this, and the appellant's own extensive highway reports, there is no expert highway evidence, such as may be prepared by a highway engineer or similar, to support the Council's reason for refusal. Nevertheless, the poor visibility at the access and characteristics of East Street are clearly evident on site. While my own analysis of the situation has given me no reason to depart from the highway officer's views, it is not unreasonable behaviour to refuse permission where the access visibility is clearly below standards expected for the posted speed limit, especially as the Highway Officer's conclusion was described as being a balanced one.
5. The Council cannot currently demonstrate a 5-year supply of deliverable housing land. However, the decision to refuse permission on the basis that the site is outside the defined development boundary is in accordance with the development plan. The committee minutes do not reveal explicit consideration of paragraph 11(d) of the National Planning Policy Framework (the Framework). However, it is dealt with in the officer's report and, on that basis,

there is no substantive evidence that the balance outlined in that part of the Framework was not in members' minds when making the decision. The Framework, including paragraph 11(d) is a material consideration to be weighed in the planning balance and it is not unreasonable to exercise judgement as to the weight to be applied to it.

6. I understand that the appellant may feel that they had been left with no option but to appeal the Council's decision. The Council's evidence in respect of the main issues is limited and lacks rigorous analysis of the particular circumstances. However, with regard to the above matters, I find that unreasonable behaviour has not occurred in that regard. A full award of costs cannot, therefore, be justified.
7. However, in discussing the site's location outside the defined development boundary, the Council's appeal statement raises the possibility that the proposal could be regarded as major development within the Area of Outstanding Natural Beauty (AONB). This a new concept that had no previous reference in the officer's report nor committee minutes.
8. Indeed, the officer's report is clear that no harm to the AONB would arise and that Framework paragraph 11(d)(ii) should be applied. Given the operation of Framework footnote 6 and paragraph 11(d)(i), and that the committee minutes do not indicate otherwise, it must be the Council's view that the proposal is not major development within the AONB.
9. I appreciate that the Council has not argued that the proposal is major development in the AONB. Nevertheless, as the decision maker, I have been invited by the Council to consider whether it could be, despite all of the Council's evidence implying that it is not. In this context, and given the potential implications for the application of the Framework paragraph 11(d) balance, it is unsurprising that the appellant felt compelled to produce rebuttal evidence.
10. Given the Council's position on the matter and lack of evidence as to why I might conclude the proposal was major development within the AONB, raising this point is of no clear relevance to the main issues in dispute. Such behaviour is unreasonable. The appellant was put to put to unnecessary work and expense late in the appeal process dealing with it.
11. I, therefore, conclude that a partial award of costs is justified.

Costs Order

12. 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 Miss Hughes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in producing evidence associated with whether the proposal should be considered as major development within the AONB, such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. 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.

M Bale

INSPECTOR