



Costs Decision

Site visit made on 22 September 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021

Costs application in relation to Appeal Ref: APP/D1265/W/21/3272183 Billy Winters Bar Diner, Portland Beach Road, Portland DT4 9JZ

- 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 Ferrybridge Marine Ltd for a full award of costs against Dorset Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for retention and first floor expansion.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The applicant asserts these circumstances on the basis that the Council has not referred to the Fallback Position during the appeal.
3. Whilst ref 03/00774/FULM was referred to by the Council in its appeal evidence, the concept of it serving as a Fallback Position to justify the proposal was not. However, in an email dated 14 December 2020, the Council's DM Team Leader did engage with the issue in detail, considering that it was not a genuine Fallback Position on the basis of its design and in the absence of a certificate of lawful use or development for its lawful commencement.
4. As such, I do not agree that the Council acted unreasonably in its failure to engage with the matter during the appeal itself. It is unclear how the Council in not doing so would have caused unnecessary costs in the appeal process in any event. As I have ultimately dismissed the appeal, the Council's conduct has also not delayed development that should clearly have been permitted.
5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Matthew Jones

INSPECTOR