
Costs Decision

Site visit made on 7 December 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2021

Costs application in relation to Appeal Ref: APP/D1265/W/21/3272196 Land off Sunnydale Road, Swanage, Dorset BH19 2JA

- 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 Rob Westhead of Bayview Developments South Limited for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for proposed residential development of 2no. 3 bedroom bungalows with parking and associated garden amenity.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant considers that the Council acted unreasonably on procedural and substantive grounds on the following basis. Firstly, despite not having referred to the need for a sequential test in a previously refused planning application at the site, the Council requested a sequential test be prepared some months after the appeal proposal was registered as a planning application. There were costs associated with the preparation of the sequential test submitted.
5. Secondly, the refusal reason on the Council's decision notice asserts that the appeal proposal would lead to increased risks of flooding to 'existing and the proposed dwellings' which contradicts the findings of the specialist reports submitted by the applicant with regards to flood risk. Moreover, the Council did not consider whether the proposed management and mitigation of flood risk was acceptable. They contend that this avoided making a decision regarding flood risk, thereby necessitating the appeal. Finally, when considering the merits of the

sequential test, the Council applied the wrong PPG guidance when considering whether there were other reasonably available sites.

6. PPG confirms that awards against a local planning authority made on a procedural basis relate to the appeal process and costs cannot be claimed for the period during the determination of the planning application¹. Irrespective of whether the Council had referred to the sequential test in relation to previous development proposals, it will be seen from my decision that having regard to local and national policies relating to flood risk, I found that it was appropriate to apply the sequential test in this case. Accordingly, the Council did not behave unreasonably in that regard. It follows that the applicant was not put to unnecessary expense in providing evidence relating to the sequential test for the appeal.
7. Once the Council concluded that the sequential test had not been met, its planning report² stated that further comments on the Flood Risk Assessment and other flood reports submitted were not expressed. As will be seen from my decision, I do not consider that to be an unreasonable approach. The national policy approach to flood risk and development is explicitly stepped, whereby the avoidance of development at higher risk sites precedes the consideration of flood management and mitigation. The latter is only necessary where it has been successfully shown that the development proposed needs to be in the location where there is a risk of flooding. On that basis, I cannot agree that the Council avoided making a decision in respect of flood risk.
8. However, I accept that having articulated this approach, it was contradictory for the Council to include a statement in the refusal reason that the proposal would lead to an increased risk of flooding at existing dwellings. Furthermore, their statement of case is generally noncommittal³ on the matter of the proposed flood mitigation measures.
9. Nevertheless, the refusal reason also clearly states why the Council considered that the proposal did not meet the sequential test. In order for the applicants to have succeeded on this issue at appeal, it would have been necessary for them to demonstrate not only that the sequential test was met, but also that the proposal would be safe for future users and that it would not increase flood risk overall. Hence, although greater precision in the wording of the refusal reason would have been helpful, I am not persuaded that the wording used amounts to unreasonable behaviour on the part of the Council. Neither is it shown that the wording of the refusal reason caused the applicants to incur unnecessary expense in the appeal process.
10. The applicant is critical that, when considering the matter of reasonably available alternative sites, the Council referred to a section of the PPG pertaining to Housing and economic land availability assessments rather than more specific PPG advice on flood risk. However, the PPG flood risk guidance specifies a general approach, and states that this should be pragmatic. It does not provide a definition of what constitutes 'reasonably available sites' and moreover, it is only advice rather than policy.

¹ Paragraph 033 Reference ID: 16-033-20140306 & 046 Reference ID: 16-046-20140306

² Page 9, Council's Planning Report

³ Paragraph 4.19, Council's Statement of Case

11. Furthermore, the Council clearly set out how it defined the term, and it is not shown that the Council failed to be pragmatic in its approach. Neither is it shown that had they not referred to this part of the PPG they would inevitably have come to a different conclusion regarding the sequential test. Consequently, their behaviour was not unreasonable.
12. Therefore, overall, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG. As I am not persuaded that the Council have acted unreasonably in this case, it follows that the applicant was not put to unnecessary or wasted expense in testing their decision at appeal.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector