
Costs Decision

Hearing Held on 14 and 15 December 2021

Site visit made on 16 December 2021

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2022.

Costs application in relation to Appeal Ref: APP/D1265/W/20/3259308 Land south of the A30 and east of Shaftesbury, Salisbury Road, Shaftesbury, Dorset SP7 8BS

- 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 Persimmon Homes (South Coast) Ltd for a full award of costs against Dorset Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for an employment led mixed-use scheme consisting of industrial starter units, primary school, up to 135 dwellings and flexible commercial uses to include a combination of hotel and non- food retail or a residential care home together with car parking, sport pitches, public open space and associated works.
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Decision

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

The submissions for Persimmon Homes (South Coast) Ltd

2. The planning policy base documentary has in part relied upon third party anecdotal evidence to question the marketing. The policy commentary has not considered the employment on a Council wide basis but town basis and contravenes a recent appeal decision. The scheme has clear benefits of affordable housing, some employment, a school and care home, hotel/non food retail but there was a lack of engagement by the Council. There was a failure to issue a decision or prepare a recommendation within the timetables set out, which necessitated the appeal. Since the registration of the planning application in March 2019, the appellant has had to update reports on employment and housing land supply, which was unnecessary.
3. The applicant's rebuttal highlights the times taken over the application process and the submitted e-mails shows their willingness to collaborate. The updated assessments did incur additional costs. If the Council's policy position was clear, then the application should have been refused. In such circumstances the appellant could have understood the Council's position. They appreciate current pressures but were entitled to a service.

The response by Dorset Council

4. The submitted e-mails show that the Council was working positively and amicably to resolve their differences. The proposal was contrary to the

Council's strategic policy objectives in key employment allocations, housing delivery in Shaftesbury and principles of sustainability. The e-mail of 2 March indicates that there were some fundamental policy objections. Some of the appeal decisions were taken out of context and did not refer to key employment allocations. The pandemic has had an impact.

Reasons

5. 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.
6. The Council accepted the FEMA and the overall employment supply. This case however also involved the specific impact on Shaftesbury in terms of its outward traffic generation. Indeed, the site was the only employment allocation in the town which has also had substantial new housing. Whilst I did not agree with the Council in the main decision, their stance was understandable particularly with the current concern about carbon emissions.
7. The judgement on the adequacy of the marketing was not an exact science for several reasons. Firstly, there had been a couple of offers and it was questionable how long this should be pursued. Secondly whilst I found in favour of the proposal, the adequacy of the marketing had to be considered with the need for a comprehensive scheme and the likelihood of a wholly policy compliant scheme coming forward, which was not a simple assessment. Thirdly the implementation of the allocation would have only needed one firm offer.
8. The consideration of the proposal hinged upon Local Plan Policies which date at 2016 and the Neighbourhood Plan which is very recently adopted. The Council's reluctance to go against the Development Plan was understandable, particularly as the size and scale of the proposal was significant in strategic terms for North Dorset. Such a stance in accordance with the long established Development Plan policies was not in my opinion unreasonable even in the light of housing land supply.
9. Whilst the delay did lead to the need to update reports, this also allowed more marketing time to occur and additional time to lapse to question the potential for implementation following the 2016 Local Plan adoption.
10. The application is dated 11 March 2019 and the appeal is dated 11 September 2020. Whilst this is a considerable length of time, the right to appeal for non determination was available earlier. In any event, the extent of the lapsed time after the Local Plan adoption, helped my favourable consideration of the appeal proposal.
11. The value of the benefits was open to interpretation and planning judgment. They are not prescribed and quantified as precise scoring but had to be weighed up. The Council were entitled to their view that they were insufficient to outweigh the conflict with the Development Plan.
12. Whilst a determining decision was not made, the e-mails do show that the Council was communicating its concerns. The Council's position was therefore known which did allow the appellant to submit comprehensive appeal statements.

Conclusion

13. For the above reasons I conclude that the Council has not acted unreasonably, and that the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR