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## Costs Decision

Site visit made on 29 March 2022

**by J Ayres BA Hons, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2022**

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### **Costs application in relation to Appeal Ref: APP/D1265/W/21/3291008 The Bungalow, Brooklands Farm, Horton, Wimborne, Dorset BH21 7JU**

- 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 Philip Bascombe for a full award of costs against Dorset Council.
  - The appeal was against the refusal of planning permission to develop land by erection of agricultural dwelling without complying with a condition attached to planning permission Ref P/A 432649.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and where the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process<sup>1</sup>. Costs can be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal<sup>2</sup>.
3. The Applicant highlights a number of what they consider to be errors in the Council's handling of the matter, these are generally based on correspondence following the refusal of the application at a time when the Applicant was deciding whether to submit a fresh application or appeal the decision.
4. The Applicant asserts that they sought to clarify a number of matters with the Council, these related to the suitability of the marketing process having regard to the absence of a specific policy, the absence of specific professional advice by an agricultural specialist in respect of the applicant's case, and information surrounding compliance with the condition. These issues would, it is the applicant's case, amount to a lack of cooperation by the Council. Furthermore, the applicant asserts that there was subsequently a failure on the part of the Council to produce evidence to support its reason for refusal<sup>3</sup>.

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<sup>1</sup> Planning Practice Guidance Paragraph: 030 Reference ID: 16-030-20140306

<sup>2</sup> Planning Practice Guidance Paragraph: 031 Reference ID: 16-031-20140306

<sup>3</sup> Planning Practice Guidance Paragraph: 047 Reference ID: 16-047-20140306

5. In response, the Council contends that the Applicant had the opportunity to seek pre-application advice during which the Council's requirements in respect of a marketing process could have been discussed. The Council maintains that it was not unreasonable to not employ an independent agricultural consultant, and argue that it was for the applicant to demonstrate that there was no local demand for the dwelling which would should be borne out through the result of the marketing exercise. Finally, the Council insists that, in the absence of a specific policy, it had regard to the National Planning Policy Framework and sought to ensure that an isolated home would only be permitted in the event that the removal of the condition had been fully justified. The Council argues that through its assessment of the application, as set out in the officer report, it was not satisfied that the evidence put forward was sufficient to conclude that the condition is no longer reasonable or necessary.
6. My decision makes it clear that I do not agree with the Council's assessment. I am satisfied that the appellant demonstrated that they had conducted a robust marketing exercise, overseen by an appropriate agent, and that as a result of that exercise the evidence leads me to conclude that the condition is no longer reasonable or necessary. However, the issue of marketing, including approaches to the process and length of time, is not entirely clear cut. It is a matter of judgement having regard to the evidence submitted and the circumstances more generally. In the absence of a specific policy the appellant was in the unenviable position of having to put forward sufficient evidence. However, in pursuing the application they had the benefit of an experienced local agent who would have been in a position of advising, and indeed did advise, what matters should be addressed and how the local circumstances would affect the ability to comply with the condition.
7. The Council's officer report set out the process that was conducted in considering the evidence and identified areas where the Council considered the evidence to be lacking in substance. This is a matter of judgement, and the Council officer would have been a professional who was exercising their judgement in that regard. I do not consider that the decision to not engage an agricultural consultant was unreasonable. It is a matter of considering the evidence put forward and reaching a conclusion, which is what the Council did. Whilst I acknowledge the Applicant's representations in respect of pre-application advice, it would have been a valid opportunity to engage with the council, and in instances like this where technical issues can arise, it may have been advisable prior to the initial application. In respect of seeking advice following the Council refusal, the officer report identified those areas within which the Council considered there to be concerns, and these have been adequately addressed through the course of the appeal. I do not consider that the Council acted unreasonably or failed to engage with the Applicant.
8. A further statement was submitted by the Council as part of the appeal which expanded on parts of the Council's case and identified evidence that the Council considered pertinent, and which I have in turn considered. Through the process of the appeal the statement and information submitted by the appellant was successful in addressing issues surrounding the marketing, and indeed the additional information from the Council. I am satisfied that the Council sought to defend its reason for refusal through its appeal submissions and that these matters were in turn addressed in final comments.

9. Whilst I have come to a different conclusion to the Council in respect of the issue, I consider that it would not be reasonable to conclude that the Council had behaved unreasonably in its approach to determining the application, or during the appeal procedure on the basis of the information before me.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

J Ayres

INSPECTOR