
Costs Decision

Site visit made on 8 November 2022

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2023.

Costs application in relation to Appeal Ref: APP/D1256/W/22/3302595 19 Beech Road, Weymouth DT3 5NP

- 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 Frank Baugh and Ms Joan Wilkins for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for erection of a single storey dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The applicant considers that the Council acted unreasonably by refusing planning permission on the basis that the access was substandard without qualification and by actively encouraging the submission of the planning application.
3. In response, the Council state that it is not unreasonable for them to reach their own conclusion with regard to highway safety despite the lack of an objection from the highway authority. They also state that it was not unreasonable for them to reach a different decision to their initial pre-application advice following receipt of an application.
4. The PPG advises behaviour that may give rise to a substantive award of costs includes the failure to produce evidence to substantiate each reason for refusal on appeal. The first reason for refusal references limited forward visibility for vehicles emerging from the site. It is not unreasonable for the Council to come to a different view from that given by the Highway Authority. However, the Council's Delegated Officer Report fails to provide background evidence or justification for this. In addition, the Council failed to provide a relevant development plan policy in support of their concerns. The Council's Statement of Case for the appeal also fails to mention or provide evidence in relation to this matter.
5. In light of the lack of any detailed justification or evidence to substantiate that the access would be substandard, the applicants have had to provide evidence

addressing this part of the reason for refusal. That is unreasonable and has led to unnecessary and wasted expense in relation to this matter.

6. The pre-application response was clear that it represented an officer opinion at the time of writing, and that it was given without prejudice. It was also provided without the benefit of full consultation, or a site visit due to the Covid19 pandemic. Although I appreciate that the pre-application response encouraged the submission of a planning application, it does not follow that planning permission should automatically be granted.
7. As I have found in the Council's favour in relation to the proposal having a harmful impact upon the character and appearance of the area, it was not unreasonable for the Council to refuse planning permission.
8. The Council also produced suitable evidence to justify their concerns regarding the impact upon the living conditions of the occupiers of 17 and 19 Beech Road, albeit I have found in the applicant's favour in relation to this. Therefore, in relation to the Council encouraging the submission of a planning application but subsequently refusing planning permission, on balance I do not find that the Council acted unreasonably.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Mr Frank Burgh and Ms Joan Wilkins, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to highway safety through inadequate visibility, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

C Rose

INSPECTOR