
Costs Decision

Site visit made on 7 February 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2023

Costs application in relation to Appeal Ref: APP/D1265/W/21/3289147 Land at Goulds Farm, Fox View, Milborne St Andrew DT11 0FX

- 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 MDM Developments Ltd for a partial award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for the variation of condition number 2 of planning permission 2/2017/0277/FUL.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. Planning Practice Guidance (the 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 states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicant is seeking an award of costs in relation to substantive matters.
4. In essence the Applicant has put it to me that the proposal does not differ substantively from the previous scheme approved at the site and that the Council have failed to provide specific evidence or justification regarding the reason for refusal. The Applicant further maintains that the Council failed to provide adequate assessment of the character and appearance of the Milborne Conservation Area or provide specific reasons as to why the appeal scheme would fail to positively respond to the character and appearance of the area.
5. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a substantive award of costs. Amongst other things, this can include, "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 "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
6. It will be seen from the appeal decision that I disagree with the Council's reason for refusal. However, despite the lack of a Conservation Area appraisal

or provision of comments from the conservation officer, the Council's officer report clearly identifies the changes that would result from the amended scheme and has provided reasons why those changes would, in their view, result in a development that would dominate its surroundings, adversely affecting the character and appearance of the Conservation Area and the surrounding area.

7. The officer's report further provides their view of what level of harm to the designated heritage asset would be caused by the scheme, and has assessed the benefits that the scheme would provide. Given the extent of the changes made to the form and layout of the proposal when compared to the previously permitted scheme, which were comprehensively described within the Council's officer report, I do not find that the Council has failed to determine similar cases in a consistent manner.
8. Matters such as the effect of a proposal on character and appearance can be subjective and, in this case, the precise reasons for the Council's finding that the application would result in harm to the area's character and appearance are clearly set out in the Officer's report. The Council have further provided clear reasons why that harm would not, in their view, be outweighed by any benefits that the proposal would provide. Whilst I have come to a different conclusion to that of the Council with regards to the appeal scheme's impact on the character and appearance of the Conservation area, I do not consider that the Council did make vague, generalised or inaccurate assertions about the proposal's impact, and therefore did not act unreasonably in reaching its conclusion on the application.
9. Given that I find that the Council did not act unreasonably in terms of preventing or delaying development that should clearly be permitted, nor acted unreasonably in respect of vague or generalised assertions, it is not necessary to consider the matter of whether or not there has been unnecessary or wasted expense in the appeal process.
10. In conclusion, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that, therefore, an award of costs is not justified.

A Spencer-Peet

INSPECTOR