



Costs Decision

Site visit made on 6 September 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Costs application in relation to Appeal Ref: APP/D1265/W/23/3318712 Martins Mead, Ferndown Road, Lyme Regis, Dorset DT7 3DN

- 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 Chris Shrubbs for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for proposed construction of detached dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant contends that the Council exhibited unreasonable behaviour by basing a reason for refusal on part of a policy, and paragraph of the National Planning Policy Framework (Framework) which was not applicable to the proposed development, namely Policy ENV7(ii) of the West Dorset, Weymouth & Portland Local Plan 2015 (LP) and paragraph 172 of the Framework. The Council clarified within their Appeal Statement that the decision notice, in relation to the first reason for refusal, should have referred specifically to LP Policy ENV7(i) and the entirety of the Policy requires consideration.
4. Furthermore, the Council's Officer Report in relation to the first reason for refusal, is clear that the reasoning in relation to the refusal relates in the main to LP Policy ENV7(ii). Both this section of the Policy, and paragraph 172 of the Framework specifically relate to developments within Coastal Change Management Areas (CCMA).
5. LP Policy ENV7(ii) is clear that the council will identify CCMA's through a policy document and while I note the Council believe that they have sufficient evidence to progress the designation of the area as a CCMA within a policy in an emerging plan, it remains the case, as acknowledged by the Council, that the adoption of the emerging plan appears to be some way in the future. Therefore, as I have found in the main decision, the appeal site is not within a designated CCMA.

6. Although the Council have attempted to provide substantive reasoning, and I acknowledge the concerns relating to coastal erosion and the wider applicability of LP Policy ENV7, it is nonetheless the case that the use of ENV7(ii) and paragraph 172 of the Framework were premature and therefore misapplied resulting in unreasonable behaviour. Given the applicability of both LP Policy ENV7(i) and the second reason for refusal, the appeal would have been necessary in any case. However, the applicant has had to address this particular matter within their Appeal Statement. This indicates that unnecessary expense has been incurred to a limited extent, restricted to the cost of time expended undertaking research and preparing this aspect of the case.
7. In these circumstances, since the applicant has been put to a limited amount of additional expense in countering the Council's position, partial awards of costs are justified.

Conclusion

8. For the reasons set out above, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance has been demonstrated and that partial awards of costs are justified.

Costs Order

9. 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 Chris Shrubbs, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the element of the Council's reasons for refusal which concerned alleged conflict with Part (ii) of Policy ENV7 of the West Dorset, Weymouth & Portland Local Plan 2015 and paragraph 172 of the National Planning Policy Framework.
10. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Harrington

INSPECTOR