



Costs Decision

Site visit made on 25 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2024

Costs application in relation to Appeal Ref: APP/D1265/W/23/3327824 Former Coop Store and Car Park, High Street, Gillingham , SP8 4AG

- 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 Nathan Hopkins of Hopkins Estates Ltd for an award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission for demolition of existing former Coop store and redevelopment of the site to provide 42 residential units, comprising 4 houses (C3), 30 apartments (C3) and 8 assisted living apartments (C2), 83sqm of commercial space (Class E) allotments, landscaping and other associated works.
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Decision

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

Preliminary Matters

2. The application for costs does not expressly state whether the applicant is seeking a full or partial award of costs against the Council. On the basis of the information before me, it appears that the applicant is seeking costs in relation to a review clause in the planning obligation and both reasons for refusal given by the Council on its Decision Notice. As such, I consider that the application seeks a full award of costs and I have determined this application accordingly.

Reasons

3. 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.
4. The applicant's case for an award of costs is that the Council in refusing the planning application unreasonably withheld planning permission for development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. They make vague and inaccurate assertions about the proposal's impact that are not supported by any objective analysis, have not produced evidence to support their reasons for refusal and have sought to impose a review clause in the planning obligation that fails to meet statutory tests.
5. In respect of this last point, the Council did initially seek to include a review clause in the s106 planning obligation, at the advice of the District Valuer (DV). The lack of a review clause and indeed, the lack of a s106 did not constitute one of the reasons for refusal. However, the Council have since had further

discussions with the applicant on this point and have reviewed their position. On the basis of the advice in the PPG and the wording of Policy 8 of the LP, the Council have subsequently advised that requiring a review clause would be onerous and therefore no longer required. I am satisfied that the Council have done this in a timely manner and therefore this does not constitute unreasonable behaviour.

6. Turning to the reasons for refusal, the PPG states that local planning authorities will be at risk of an award being made against them if they make vague and inaccurate assertions about a proposal's impact that are not supported by any objective analysis and fail to produce evidence to substantiate each reason for refusal. In summary, the applicant claims that the Council acted unreasonably in going against the advice of its professional officers without good reason and that there is no evidence to support or rationalise its reasons for refusing the application.
7. The Planning Committee were not duty bound to follow the advice of its professional officers and I do not doubt that the matter was fully debated before the Council determined the application. It is now common practice in a number of Council's that when such a situation occurs, the application is deferred so that the implications for the proposed decision can be considered at a subsequent meeting. The fact that this did not happen here is not in itself unreasonable behaviour. However, it could lead to unreasonable behaviour on substantive grounds if the Council fails to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
8. The Council's first reason for refusal relates to the lack of affordable housing provision. Whilst on the face of it, the lack of any affordable housing on a major scheme of 42 residential units would be contrary to Policy 8 of the LP, it is quite clear that the Council accepts that a lower level would be appropriate where supported by robust viability evidence¹. In this instance, the appellant followed the procedure set out in paragraph 5.94 of the supporting text to Policy 8 and the Council had the response of the DV before them when determining the application. There is no ambiguity in the response of the DV; the provision of any affordable housing would render the scheme unviable and the Council do not dispute this. On this basis, I find that the Council were unreasonable to refuse the application on the lack of affordable housing provision, in light of the evidence before them. This constitutes unreasonable behaviour.
9. In respect of the second reason for refusal, the Council minutes, statement and costs response fail to explain why in this instance, the loss of retail floorspace would be detrimental to the viability and vitality of the town centre. The Council's case in this respect is scant and lacks detail. The Council have made vague and inaccurate assertions about the proposal's impact that are not supported by any objective analysis and have failed to produce evidence at appeal to substantiate the reason for refusal. This constitutes unreasonable behaviour.
10. In respect of both reasons for refusal, the Council have failed to substantiate their case. I have concluded that having regard to the provisions of the development plan, the development proposed should reasonably have been

¹ Paragraph 5.89 of the LP

permitted and therefore the appellant has been faced with the unnecessary expense of lodging the appeal.

11. Whilst I do not find that the Council acted unreasonably in respect of the review clause in the planning obligation, I do find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of both reasons for refusal and that an award of costs is justified.

Costs Order

12. 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 Mr Nathan Hopkins of Hopkins Estates Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pursuing reasons for refusal 1 and 2 only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

Alison Fish

INSPECTOR