



Costs Decision

Site visit made on 15 August 2024

by H Faulkner BSc(Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Costs application in relation to Appeal Ref: APP/D1265/W/23/3334691 Land South of Motcombe Road, Bittles Green, Motcombe, Dorset, SP7 9NX

- 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 R Seewooruthun of Amirez Developments Ltd for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission to erect 12 no. dwellings, form vehicular access from Motcombe Road and carry out other associated works.
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Decision

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

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. Unreasonable behaviour on the part of a local planning authority may 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, or not determining similar cases in a consistent manner.
4. The applicant contends that both in respect of refusal reasons 1 and 2 the Council acted unreasonably in reaching their assessment of the proposals.

Refusal Reason 1

5. The applicant considers that the Council were vague and generalised in their decision and that the development followed the design guidelines. The scheme was assessed to be acceptable in design terms by the Planning Officer yet the Planning Committee disregarded their advice and guidance in the Neighbourhood Plan.
6. Additionally, in coming to their decision the Council failed to give weight to Paragraph 134 of the National Planning Policy Framework (The Framework) which requires significant weight to be given to development which reflects local design policies and government guidance on design.
7. In my determination of the appeal I have reviewed the reason for refusal and I did not find it to be vague or generalised. The Council's concerns in respect of the impact on the rural character were substantiated by clearly expressed

reasons which identified the proposal's effect by virtue of the layout, landscaping and materials. Moreover, they indicated how those concerns would conflict with the requirements of the Local Plan, Neighbourhood Plan and the Framework.

8. In considering the assessment of the Neighbourhood Plan I reached the conclusion in my decision that the proposals met the requirements set out in this policy. However, for the committee members and therefore the Council to reach a different conclusion on this basis was not an unreasonable action. Whilst paragraph 134 of the Framework may not have been specifically mentioned the Council obviously did not agree that this criteria was met, despite my findings.
9. It is noted that the committee members appear not to have specifically discussed the merits of Policy MOT11 of the Neighbourhood Plan and it would have perhaps made their reasoning clearer had they done so. The committee were entitled to consider the design of the scheme before them. The term 'over-use' in the reason for refusal suggests that the use of timber is more than they considered to be acceptable. However, to refer to the use of timber cladding in itself as uncharacteristic did fail to recognise the fact that it is found in the locality of the site and referenced in the Neighbourhood Plan.
10. On this matter I find that whilst the reference to timber cladding being uncharacteristic was unreasonable in this instance, I accept that the Council were not irrational in reaching a different conclusion to the case officer, in respect of the layout of the scheme. As a result, an appeal would have been necessary in any event.

Refusal Reason 2

11. The applicant is of the view that matters in respect of the drainage strategy had been supported when the separate outline application had been determined. The Lead Local Flood Authority (LLFA) had no objection to the development subject to conditions. They believe the Committee's position to be unsubstantiated by technical evidence and failed to take into consideration the outline application which resulted in unreasonable behaviour.
12. The officer's report to the committee contains the LLFA's lack of objection to the scheme, stating that the proposal provided adequate detail to demonstrate that a viable and deliverable surface water management scheme could be designed for the development. The committee report also states that the LLFA had also been presented with the information on recent flooding events provided by residents. Councillors would have been aware of this when reaching their decision.
13. The Council claim that members were not content to rely on a conditional approach to drainage. I find this action to be unreasonable given that they had done so previously in issuing the outline consent. At this time they had also followed the advice of the LLFA. Whilst there may be local flooding issues these are reported to have been raised to the LLFA during the application process who did not find it necessary to reach a different conclusion.
14. The members may have had concerns about the approach taken in the Drainage Strategy but without any expert advice to the contrary it was unreasonable of them to conclude that the solutions presented were unacceptable and refuse the application on this basis. Whilst local knowledge

can be important, it needs to be carefully considered alongside expert evidence.

15. On this matter I find that the Council failed to act in a consistent manner, given the previous approval on the site and failed to consider the appropriate use of conditions. This unreasonable behaviour caused the applicant to incur unnecessary expense. This included countering the Council's concerns on this matter as part of this appeal within the appeal statement.

Conclusion

16. I have accepted the Council's position in respect of refusal reason 1. However, I am of the view that unreasonable behaviour as described in the PPG has been demonstrated on the part of the Council in respect of the matter of drainage. This resulted in the applicant's unnecessary expense in contesting this part of the appeal.

Costs Order

17. 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 The City Council shall pay to applicant the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second of the Council's reasons for refusal, which concerned alleged conflict with Policies MOT2 and MOT11 of the Motcombe Neighbourhood Plan and Policies 3 and 13 of the North Dorset Local Plan Part 1 in respect of flooding and drainage.
18. 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.

H Faulkner

INSPECTOR