



Costs Decision

Site visit made on 11 April 2025

by **H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 May 2025

Costs application in relation to Appeal Ref: APP/D1265/Q/24/3351320 Phase 2-4 Curtis Fields, Land south of Chickerell Road, Weymouth DT4 0TR

- 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 Betterment Properties (Weymouth) Ltd for a full award of costs against Dorset Council.
 - The appeal was against the refusal of a request to modify a S106 agreement relating to Phases 2-4 at Curtis Fields (WP/14/00777/OUT) to modify a portion of the affordable housing requirements from 30% to 26.24% following receipt of independent viability report.
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Decision

1. The application for costs is allowed in the terms set out.

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. In this case, the applicant seeks a substantive award of costs on the basis that the Council's Planning Committee reached an alternative view to the professional officer that recommended approval of the scheme without the sufficient regard to the evidence of extensive negotiations between them and the District Valuer (on behalf of the Council) and without any objective evidence to counter the conclusions reached within the Committee Report.
4. The Council indicate that members of the Committee are entitled to reach their own view and were directed to full information about the abnormal costs and negotiations that were summarised in the meeting itself. The Council defends its conclusions as being based on fact such as the 'abnormal' costs and changing market conditions, thus not vague or generalised. It is also reiterated that permission still exists to build out the scheme, thus not having delayed the development.
5. I am of the view that the Committee's conclusion, and ultimately the decision of the Council, is vague and unsubstantiated. The reasons for wanting to protect much-needed affordable housing in the context of limited site investigations and unforeseen changes in market conditions are entirely understandable. However, the members had opportunities to acquaint themselves with more of the detail as to why precisely the modification was being sought and the context behind the figures being presented during the deferral of the matter between meetings. The Council's suggestion that the District Valuer was unable to reach definitive conclusions

undermines the appointment of this expert advisor in the first place and the regard that was given to their advice up until the point of refusal. It also seems illogical to want to deviate from the previously agreed position on a reasonable profit level.

6. Though I take no pleasure in reaching this conclusion given the understandable motives of the Committee members, it does not appear that there was sufficient cognisance of the available information or any other cogent evidence to the contrary, to allow the members to reach the decision that it did.
7. I accept that planning permission for the scheme as a whole is still extant and that the developer is likely to have chosen to continue to build out some elements at risk, without the full understanding of the ability to viably complete the development. The appeal has been submitted with a relatively succinct Statement and has not incurred the costs associated with a hearing or any higher level event, but it has put a further burden onto the appellant with the associated ongoing risks to the incomplete development.
8. For the above reasons, the applicant has been put to the wasted expense of having to submit the appeal which is evidence of unreasonable behaviour on the part of the Council.

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 Betterment Properties (Weymouth) Ltd the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

H Nicholls

INSPECTOR