
Costs Decision

Site visit made on 4 January 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2019

**Costs application in relation to Appeal Ref: APP/B9506/W/18/3199995
Battramsley Farm, Shirley Holms Road, Boldre, Lymington, Hampshire
SO41 8NG**

- 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 CEM Powell for a full award of costs against New Forest National Park Authority.
 - The appeal was against the refusal of the Council grant planning permission for conversion of barn to residential and associated works.
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Decision

1. The application for an award of costs is dismissed.

Reasons

2. The Planning Practice Guidance 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 claims that the Council has acted unreasonably on a number of grounds, which I summarise as:
 - advancing a case that is not based on the wording of the decision notice;
 - failure to understand or correctly apply a relevant appeal decision;
 - making unsubstantiated assertions that are vague and generalised; and,
 - failing to apply the planning balance.
4. I acknowledge that the particular way in which the decision notice was drafted has led the applicant to consider that the Council's reasons for refusal turned upon its interpretation of paragraph 55 of the previous version of the National Planning Policy Framework (the Framework). However, as I have outlined in the Main Decision, a reasonable reading of the decision notice indicates that paragraph 55 formed an important material consideration in the Council's assessment, but planning permission was otherwise refused in accordance with policies in the development plan. This was indeed consistent with the Council's statutory duty set out in section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, to make decisions in accordance with the development plan unless material considerations indicate otherwise. The Council was therefore entitled and correct to advance a case whose principal basis lay in its development plan.
5. I acknowledge that the decision notice was explicit in identifying failure of the development to enhance the immediate setting as a particular concern with regard

to paragraph 55 of the previous Framework, and that a broader case was presented within the Council's appeal statement with regard to redundancy. This concern was not new however, as it was similarly expressed within the officer report. Furthermore, though concerns regarding redundancy were omitted from the reasons for refusal, the decision notice nonetheless made reference to the change of use involved. A reasonable reading of the decision notice can therefore be held to indicate that the change from agricultural to residential use was objectionable in itself, providing the Council scope to consider current use within its submissions.

6. I note that the substantial weight placed by the applicant in demonstrating that the proposed development would comply with bullets attached to paragraph 55 of the previous Framework, and now attached to paragraph 79 of the revised Framework, was partly informed by interpretation of an appeal decision at another site, reference APP/B9506/W/16/3165402. I note that the Council also had regard to this decision. However insofar as this decision considered development plan policy in light of advice in the Framework, it simply illustrated operation of the statutory decision making duty noted above. It did not predetermine or direct any particular outcome in regard to the current appeal site.
7. In this context it is fundamentally clear that the Council did not, and does not agree that the development would accord with advice in paragraph 55 of the Framework as was, or paragraph 79 of the Framework as is. The Council has indeed presented some, albeit inconclusive evidence with regard to current use, and has clearly substantiated its view that the development would not enhance the setting of the site within its submissions. I further note that the latter reflects a broader concern of Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies DPD 2010 (the CS).
8. As outlined in my Main Decision, I furthermore agree with the Council's conclusion that the enhancement measures set out in the UU cannot be taken into account as a reason for granting planning permission. This is because they do not pass the tests in paragraph 56 of the revised Framework, and in Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended. Though it was nonetheless appropriate to consider potential benefit with regard to works directly arising from implementation of the development, some of which were incorrectly included in the UU, the Council was entitled to reach a view on the weight it applied. The Council did not therefore act unreasonably with regard to the UU.
9. Whilst it is clear that planning permission was not refused solely on the basis of conflict with Policy CP12 of the CS, the Council was entitled to determine the planning application with reference to this policy, and has shown that it took the Framework into account as a material consideration in doing so. Notwithstanding my finding in the Main Decision that the Framework's advice regarding isolated homes in the countryside is not relevant to the scheme, the Council's submissions clearly justify and support its decision making approach. I am therefore satisfied that the Council has not acted unreasonably in this regard.

Conclusion

10. For the reasons set out above, I conclude that the Council did not act unreasonably on any of the grounds claimed by the applicant. As such no unnecessary or wasted expense was incurred by the applicant in making the appeal. The application for costs is therefore dismissed.

Benjamin Webb

INSPECTOR