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## Costs Decision

Site visit made on 7 March 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 October 2022**

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### **Costs application in relation to Appeal Ref: APP/V1260/W/21/3280644 Land at no.74 Hurn Way and to the rear of nos. 66-72 and 76 Hurn Way, Hurn Way, Christchurch BH23 2PD**

- 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 Pennyfarthing Homes Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
  - The appeal was against the refusal of planning permission for construction of a care home with associated parking, access and landscaping.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for costs is predicated on the claim that the Local Planning Authority has prevented or delayed development which should clearly have been permitted having regard to its compliance with the development plan.
4. Planning permission was refused on two grounds, the first of which was that there is no demonstrable demand/need for further care homes in the area. Of the policies cited in the refusal reason, Policy LN3 of the Christchurch and East Dorset Local Plan: Part 1 - Core Strategy (2014) (CS) has no relevance to the application. CS Policy LN6 expects developers to demonstrate that any impacts upon, or risks to, the strategic aims and objectives of Dorset County Council and NHS Dorset health and social care services have been taken into account and mitigated against. However, it does not explicitly require applicants to demonstrate a demand or need for their proposed development.
5. The Council has not given any substantive explanation as to how or why the proposal would undermine the aims and objectives of the relevant public sector bodies. Moreover, it has not provided a Statement of Case to rebut the appellant's care needs assessments and in particular the contention that an ageing population will lead to the current oversupply of care homes switching to an undersupply in the near future. The officer report does not give adequate reasoning for the decision and therefore the failure to produce evidence to substantiate the first refusal reason constitutes unreasonable behaviour.

6. As regards the second refusal reason, the Council has relied upon the advice of Natural England. This in itself is not unreasonable – Natural England is a statutory consultee and expert in all matters relating to European protected sites. However, the decision on whether to grant planning permission lies ultimately with the Local Planning Authority as the competent authority under the Habitats Regulations. The authority has not properly grappled with the fact that the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD) identifies C2 care home development as being acceptable in principle within 400 m of the heathland, where the residents are severely restricted with advanced dementia or physical nursing needs.
7. The SPD is caveated with the statement that proposals will be treated on a case by case basis. Nevertheless, the authority has not given a robust explanation as to why this scheme is materially different to other care homes that have been permitted within the 400 m buffer zone. Additionally, it does not provide any indication as to what it would be expecting in terms of an impact assessment relating to staff and visitors. The appellant makes suggestions for conditions to address potential impacts, but there is no commentary within the officer report as to why these would not be effective. Once again, the Council's failure to submit a Statement of Case was a missed opportunity to expand on its reasoning. In my opinion, the authority has relied upon Natural England advice without engaging with the issues. Had it done so, the appellant would not have needed to prepare evidence in relation to this matter.
8. I conclude that unreasonable behaviour has been demonstrated as a result of the Council's failure to substantiate its reasons for refusal and its failure to properly consider whether conditions would make the scheme acceptable. The appellant has incurred unnecessary and wasted expense in preparing for an appeal which was avoidable. Accordingly, I find that a full award of costs is justified.

### **Costs Order**

9. In the 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 Bournemouth Christchurch and Poole Council shall pay to Pennyfarthing Homes Ltd, the costs of 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 Bournemouth Christchurch and Poole 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.

*Robert Parker*

INSPECTOR