
Costs Decisions

Site visit made on 20 July 2016

by R M Pritchard MA PhD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 August 2016

A : Costs application in relation to Appeal Ref:

APP/Q1255/W/16/3147390

35-37 Sandecotes Road, Poole, BH14 8PA

- 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 AJ Developments Ltd for a partial award of costs against Poole Council.
 - The appeal was against the refusal of the Council to grant planning permission to demolish existing houses and erect four detached houses with garages.
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B : Costs application in relation to Appeal Ref:

APP/Q1255/W/16/3147395

35-37 Sandecotes Road, Poole, BH14 8PA

- 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 AJ Developments Ltd for a partial award of costs against Poole Council.
 - The appeal was against the refusal of the Council grant planning permission to demolish the existing houses and erect two pairs of three-bedroom, semi-detached houses.
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Decisions

APPLICATION A :

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

APPLICATION B :

2. The application for an award of costs is refused.

Reasons

3. These applications for costs were made and responded to on the basis of the advice in section 16-20140306 of the Planning Practice Guidance, which has superseded Circular 03/2009. However, it remains the position that, irrespective of the outcome of an appeal, costs may only 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 applicants have alleged unreasonable behaviour leading to unnecessary expense in respect of two appeals on the same site. In both cases, the Council advanced the same four reasons for refusal, but the applicants have excluded

from their claims work associated with the fourth reason for refusal. (This last concerned the need for mitigation payments in respect of the effects of both proposed developments on internationally designated nature conservation sites.) The three reasons on which the claims for costs are based all relate to the effects of the two developments on the character and appearance of the streetscene and wider area in which they would be located. The third reason in each case related to the inadequacy of replacement tree planting and consequent screening of the frontage of the proposed developments.

5. The applicant alleges unreasonable behaviour in respect of ‘...*generalised and vague...*’ assertions about the character and appearance of the area and the proposed developments’ impacts upon it. Specific reference is made to the relationship to two of the policies, PCS5 and PCS23, quoted in the reasons for refusal and to a failure to substantiate statements about the detrimental impact of inadequate landscaping and screening. The applicant considers that not enough analysis and justification was provided by the Council to warrant the reasons for refusal advanced on both schemes.
6. As a consequence the applicants were put to the expense of making an appeal and engaging a planning consultant to prepare grounds, final comments and these costs applications.
7. The Council’s riposte is that its decisions were founded, as they have to be, on the policies of the adopted development plan and all other material considerations. The decisions to refuse both applications were based on objective judgements that balanced the merits for and against the developments before concluding that both should be recommended for refusal. In the case of issues associated with trees and landscaping, it sought expert arboricultural advice. Furthermore, the Council notes that the applicants failed to take advantage of its standing offer of pre-application discussions as recommended by the Government’s National Planning Policy Framework (‘the Framework’). Had they done so, the applicants would have had an early and clear indication as to the acceptability of their proposals.
8. I find little evidence that the Council or its officers acted unreasonably in dealing with either of these applications. Both were essentially refused on the grounds of the material harm that they would cause to the character and appearance of the area. These grounds are commonplace but are also subject to a good deal of planning judgement. The policies quoted by the applicants are, inevitably, drafted in general terms that are open to a degree of interpretation. The Planning Practice Guidance is clear that disputes between appellants and Councils about such planning judgements rarely constitute unreasonable behaviour, especially when, as here, reference is made to the wording of adopted development plan policies.
9. Nor do I consider allegations by the applicants that the Council did not pay sufficient attention to aspects of the submitted evidence – for example other developments in the area that might have supported the applicants’ case – can carry much weight. Councils will and must devote their resources economically in relation to the appraisal of development proposals and it will be likely that not every fact put forward by an applicant will be refuted. In these cases, I was persuaded that the Council’s statement of case presented to me during the appeal demonstrated a reasonable assessment of both proposed developments and sufficient explanation as to why both were refused.

10. Moreover, the applicants' case is significantly weakened in my view by their failure to engage with the Council in pre-application discussions. These might not have resolved all the differences, but they could have clarified where dispute was concentrated and could have suggested a way forward. There is also no evidence that the applicants entered into discussions with the Council after the first refusal. At the very least, one might have expected this to have clarified what changes, if any, might have secured a successful outcome for any resubmission.

Conclusions

11. I therefore find that unreasonable behaviour resulting in unnecessary, as described in section 16-20140306 of the Planning Practice Guidance, has not been demonstrated in the case of either Applications A or B.

R M Pritchard

INSPECTOR