
Costs Decision

Site visit made on 8 August 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 30th September 2016

Costs application in relation to Appeal Ref: APP/G1250/W/16/3151544 2 Petersfield Road, Bournemouth BH7 6QE

- 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 Greenbee Homes Ltd for a full award of costs against Bournemouth Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 3 chalet bungalows with associated parking.
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Decision and Costs Order

1. 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 Bournemouth Borough Council shall pay to Greenbee Homes Ltd., the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the reason for refusal relating to trees; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Bournemouth Borough 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.

Reasons

3. 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.
 4. The Council officer's report claims to have assessed the proposal in the light of Core Strategy Policy CS21. At appeal, the Council claims that this was in error, saying that the site did not meet the locational criteria relevant to this policy. The Council offered no evidence to rebut the appellants' contention that the site is within 400m of a key transport route, and on the basis of the very specific provisions of the Core Strategy which to my mind clearly indicate that the site is within 400m of a key transport route, I find that it was unreasonable to hold otherwise.
 5. Exactly what policy considerations the Council had in mind when making the decision are hard to determine. The officer report, whilst referring to Policy CS21, did not refer in detail to its provisions, or that of Policy CS22, which the Council now claims is the correct policy, although I find otherwise. Despite this error, I am not convinced that this affected the decision to refuse the application. Officers made the recommendation to approve the application.
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Members are at liberty to arrive at a different decision, but must do so on substantive planning grounds, backed by objective analysis. In my view, the matter was not straightforward. The previous appeal decision was a material planning consideration, with the Inspector in that case finding that a single dwelling within the site would be harmful, and would conflict with the basic layout of the area so as to render the proposal unacceptable.

6. That decision, taken in 1984, is of some age, but the physical relationship between the plot and its surroundings will not have changed significantly in the intervening years. In my opinion, the Council was entitled to place weight on that finding. Even if they had in mind the correct criterion of Policy CS21 which requires that proposals should contribute positively to the character and function of the neighbourhood and maintain and enhance the quality of the street scene, it is likely that they would have found that the appeal decision justified the refusal. Layout is also a consideration to be taken account in saved Policy 6.8, to which the reason for refusal also refers.
7. I have found that the current policy, together with changes in national policy over the years since 1984, now paints a different policy context in which assessments of character and appearance may be made. However, it is a matter of judgement as to how much weight should be attached to the previous appeal decision, and although I have found that the passage of time and change in the policy landscape have justified a different approach, it was not unreasonable for the Council to arrive at a different decision.
8. Thus whilst it was unreasonable to disown the application of Policy CS21, I consider that it is likely that if it had been properly considered it would not have led to a different outcome, and that the decision to refuse the application on this ground was not unreasonable.
9. Turning to the reason for refusal concerning trees, the Council has not produced any evidence to show why concerns about trees could not be adequately dealt with by the imposition of conditions. Its own specialist arboricultural officer had no substantive concerns, and the Council has not produced any other technical evidence.
10. Whilst it is clear that the Council was concerned about the effect of the proposal on trees, there is no clear technical reason why those concerns could not be adequately addressed by the imposition of a condition requiring the submission of a tree protection scheme. I consider that this reason for refusal lacked a respectable evidential basis. The appellants were therefore put to unnecessary expense in providing evidence to refute the reason for refusal.
11. I therefore conclude that unreasonable behaviour within the meaning of the Guidance has been demonstrated, and that the appellants were put to unnecessary expense in bringing the appeal on this ground. A partial award of costs is therefore justified.

JP Roberts

INSPECTOR