
Costs Decision

Site visit made on 30 August 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 01 November 2016

Costs application in relation to Appeal Ref: APP/G1250/W/16/3152074 17 Clowes Avenue, Bournemouth BH6 4ER

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ashwood 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 a dwellinghouse and access to severed property without complying with a condition attached to planning permission Ref 7-2014-25299-A, dated 7 January 2014.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the *Planning Practice Guidance* (the 'Guidance') sets out that 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.¹
3. The appellant's main case for an award of costs is that the Council validated the application as an application under Section 73 of the *Town and Country Planning Act 1990* as amended (the '1990 Act'), but did not thereafter consider the planning merits of the proposal against the appropriate provisions of the development plan and other material considerations in line with the approach to decision-taking in Section 38(6) of the *Planning and Compulsory Purchase Act 2004* as amended.
4. There is a distinct procedure for disputes in respect of whether an application is valid, i.e. under the provisions of Article 12 of *The Town and Country Planning (Development Management Procedure) (England) Order 2015*. Consequently, upon receipt of the application the Council had two choices as to how to proceed: either the proposal was not a valid application under Section 73 of the 1990 Act, or alternatively that it was a valid application and thereafter to determine the proposal in accordance with the statutory basis for decision-taking set out above.

¹ Reference ID: 16-030-20140306.

5. I acknowledge that whether a proposal represents a minor material amendment is essentially a matter of judgement and that the extent of the changes proposed via application Ref 7-2015-25299-B compared with its predecessor, application Ref 7-2014-25299-A, were more extensive than the summary thereof given by the appellant in correspondence to the Council dated 14 December 2015.²
6. Nevertheless application Ref 7-2015-25299-B was validated by the Council as a Section 73 application, their having also received at that stage the revised plans of the development proposed which illustrate the extent of the amendments. There is moreover nothing in legislation, or elsewhere, expressly limiting applications made under Section 73 of the 1990 Act to minor material alterations alone.
7. The Council's sole reason for refusal given in their decision notice was that in their view the proposal did not amount to a minor material amendment, and consequently that a planning application should have instead been made. The Council's approach to determining the application was, in my view, as a consequence clearly flawed.
8. Nevertheless application Ref 7-2015-25299-B is intrinsically linked with its predecessor, and correspondence from the Council to the appellant dated 7 January 2016 explains that in the Council's view the proposal would '*reinstate the amendments that were originally secured [via the former permission]*'. The Council's officer report and appeal statement associated with application Ref 7-2015-25299-B also makes reference to the proposal increasing the scale and bulk of the proposal beyond that which was previously considered acceptable.
9. In this context it is therefore clear that the Council were unsupportive of the development proposed in relation to its planning merits, irrespective of their approach to handling the application. The appellant pursued the appeal in full knowledge of this position, and therefore the Council's procedural approach here cannot be said to amount to unreasonable behaviour as the acceptability of the development proposed in planning terms is a matter of judgement rather than of absolutes.
10. I note the appellant's associated contention that the Council did not work positively or proactively with them towards an acceptable proposal. Whilst the *National Planning Policy Framework* (the 'Framework') sets out that local planning authorities should approach decision-taking in a positive way and look for solutions rather than problems, it does not guarantee that all development is acceptable or can be made so through engagement. As such the Council's approach here cannot be said to be demonstrably unreasonable.
11. The appellant further contends that the Council did not deal with similar cases in a consistent manner. Various successful Section 73 applications elsewhere within the Council's administrative area have been brought to my attention in

² That '*the proposal is only to change the roof form and therefore it [the proposal] does not require a full planning permission*'.

this respect which the appellant contends represent a more permission approach by the Council in other instances. However all such examples relate to development of a far greater scale as was proposed via application Ref 7-2015025299-B.³ As such these instances are not directly comparable with the circumstances in the appeal given that even ostensibly limited changes to a modest property may result in significant effects, and in any event each proposal must be determined on its particular merits.

12. It appears not to be disputed that until 3 March 2016 the Council considered incorrect plans during their consideration of application Ref 7-2015-25299-B. Nevertheless the Council's decision is dated 26 May 2016, and there is no suggestion that the ultimate decision that they arrived at was in respect of incorrect plans. Consequently this matter does not appear to have unduly influenced the determination of the proposal.
13. I understand some time elapsed between the Council's refusal of permission and the date on which this was requested by the appellant following an informal indication by the Council that they were not supportive of the proposal. Nevertheless costs may only be claimed in relation to the appeal process, and cannot extend to compensation for indirect losses such as those resulting from delay at application stage.⁴ Whilst the Council could have issued a decision more expediently, in my view this cannot in this context be said to amount to unreasonable behaviour directly resulting in costs to the appellant.
14. For the above reasons, and notwithstanding the shortcomings with the Council's handling of the application, I am not of the view that unreasonable behaviour resulting in unnecessary expense has been demonstrated. I therefore conclude with reference to the approach in the Guidance that an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR

³ Application Ref 7-2015-4018-AX relates to a block of flats comprising 74 dwellings, 7-2016-10388-D relates to the conversion of a building into 11 flats, and 7-2016-3040-AG a mixed use three storey property. Plan No 102/1214 related to 42 Belmont Close is also in the information before me, however it is unclear what relevance this has to the appeal given that this case is not apparently referred to within the appellant's appeal statement or final comments at appeal.

⁴ Reference ID: 16-033-20140306.