
Costs Decision

Site visit made on 10 October 2016

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 11 November 2016

Costs application in relation to Appeal Ref: APP/Q1255/W/16/3153798 R/O 148 Bournemouth Road, Poole, Dorset BH14 9HY

- 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 Richard Kirk for a full award of costs against Poole Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing storage/garage building and erection of 2 bedroom maisonette over ground floor parking and storage.
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Decision

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

Reasons

2. The application for an award of costs is based on the claim that the Council failed to communicate any concerns about the application. However, there is evidence of a telephone call during which the agent was advised that the application would be refused. The conversation was not recorded in detail, but it is fully apparent that the appellant was aware of the situation.
 3. Several days later the case officer advised the agent by email that there would be a delay whilst a missing neighbour notification was carried out. However, the Council has not given satisfactory reasons as to why a decision notice remained outstanding some 10 weeks later. The delay in determining the application without any form of communication constitutes unreasonable behaviour. The appellant's decision to lodge an appeal for non-determination is therefore understandable.
 4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Consequently, it does not automatically follow that an award of costs would be appropriate in every situation where unreasonable behaviour is identified.
 5. In this particular case the appeal did not succeed for reasons relating to the impact of the development on the character and appearance of the area and living conditions. The Council produced evidence during the appeal process to substantiate its concerns regarding these matters. Whilst those concerns should have been communicated to the appellant sooner, I am not persuaded that the
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appeal could have been avoided. For this reason I consider that the appellant's evidence was a necessary part of the appeal process and the costs incurred in its preparation were not wasted.

6. Given the nature of the Council's concerns it would not have been an efficient use of public resources to draft a S106 agreement in relation to the Strategic Management and Monitoring contribution. As such, it would always have been necessary for the appellant to undertake this work as part of the appeal process, taking legal advice as appropriate. The need for any mortgage lender to be party to the deed is set out on the Council's website and therefore it should not be held responsible for the delay resulting from the need for additional signatories.
7. To conclude, whilst I can appreciate the sense of frustration felt by the appellant regarding the delay in determining the application, an award of costs in this instance is not justified.

Robert Parker

INSPECTOR