
Costs Decision

Site visit made on 3 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 25th January 2017

Costs application in relation to Appeal Ref: APP/G1250/W/16/3156039 10 Queens Road, Bournemouth BH2 6BE

- 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 Hector for a full award of costs against Bournemouth Borough Council.
 - The appeal was against the refusal of planning for a change of use from a restaurant within Use Class A3 to a micro-pub falling within Use Class A4.
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Decision

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

Reasons

2. The Appellant submits that the Council has acted unreasonably in that it has presented a 'spurious reason for refusal' and that there has been a 'lack of consistency in the decision making process of the Council'. These assertions are not elaborated on in any greater detail. However, I concur with the Council's interpretation that the first ground suggests that the reason for refusal asserts the Council were unable to produce evidence to substantiate their decision and in relation to the second ground that the Council had been inconsistent, both in not following their officers' advice and not making the planning decision in accordance with the previous grant of a licence for the proposed micro-pub function.
3. The National 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 the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. In this case, the key matter of living conditions of adjacent occupiers was explored by Councillors during the determination of the application at the Committee meeting. The reason for refusal clearly reflects the sum of concerns expressed of the effect of the development, and this is clearly presented with the support of a relevant policy from the development plan. Moreover, in their Statement of Case for the appeal the Council consider the imposition of conditions that may have mitigated the harms, and sets out the reasons why

they considered this inappropriate. Whilst this view may have been different to that expressed by officers, and indeed different to the reasons set out in my decision to allow the appeal, that does not of itself mean the Council behaved unreasonably.

6. While the Council is not duty-bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate *on planning grounds* why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. This in my view, also for the reasons set out above, I believe they have done.
7. Whilst it may seem superficially perverse for the Licencing Committee of the Council to grant a Licence for the trade on the one hand and to refuse planning permission on the other, this again does not automatically determine they acted unreasonably. Although it may be confusing for the appellant, and indeed unfortunate in the light of my conclusions, each consideration has their own different and specific (though related) criteria. I am satisfied, notwithstanding the consideration of the Licencing Committee, that the Council was able to demonstrate planning grounds for concluding the proposals were contrary to the relevant policy of the development plan, in the terms of their own planning judgement.
8. Although I have disagreed with their judgement on this matter, this does not determine on this, or the first ground, that the Council have acted unreasonably in refusing the planning application. As such therefore no unnecessary expense has been incurred by the appellant in bringing the appeal.
9. For the above reasons the application is refused and no award is made.

David Morgan

Inspector