
Costs Decision

Site visit made on 16 February 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 11 April 2017

Costs application in relation to Appeal Ref: APP/Q1255/W/16/3156314 Unit 1, Rigler Road, Poole BH15 4BN

- 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 A Fortia for a full award of costs against Borough of Poole.
 - The appeal was against the refusal of planning permission for renew for a further 24 month period, with minor amendments, planning permission ref: APP/15/01577/C, which grants temporary planning permission for a change of use from storage use (B8) to a car wash and car sales centre and the erection of an ancillary office, staff room, associated canopies and boundary treatments.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

Reasons

3. The 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 first issue concerns the appellant's claim that the Council's decision was unsupported by any objective analysis relating to the matters of noise, disturbance and water spray to counteract advice from the Council's Environmental and Consumer Protection Services (ECPS), who raised no objections having undertaken monitoring work.
 5. Secondly, it is claimed that the Council gave no weight to a fall-back position relating to the previous decision notice Ref APP/15/01577/C which the Council initially issued with an expiry date for the permission of 14 July 2018, contrary to the Planning Committee's resolution for it to be for 6 months; relying instead on the subsequent corrected decision notice with that 6 month expiry date.
 6. In respect of the first issue, I acknowledge that the Planning Committee can come to its own decision, having regard to the relevant policies of the development plan, despite the recommendation from officers. However, in this instance, no objections were raised by the ECPS who, importantly, had
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conducted monitoring of noise levels as well as assessment of the extent to which water spray is contained. Furthermore, such monitoring was in line with the Council's reasoning for the 6 month temporary period relating to the previous planning permission, which included allowing the opportunity for the ECPS to investigate the operations on-site. No similar substantive monitoring evidence has been submitted to contradict the ECPS conclusions.

7. I acknowledge that the Council's reason for refusal in its decision notice is clear and related to relevant development plan policy. However, for the above reasons, I find that it has failed to adequately justify or support that decision, particularly in light of the professional advice provided by its officers, supported, importantly, by substantive monitoring work, raising no objections. The application was therefore unreasonably refused planning permission, leading to an appeal that could have been avoided.
8. In respect of the second issue, whether or not the originally issued decision notice for application Ref APP/15/01577/C, with the temporary period until 14 July 2018, represents a fall-back position, the planning application relating to this appeal was submitted with reference to the corrected version. It sought an extension of time from the 6 month period set out in that previous decision. I have received no substantive evidence to indicate that the appellant, at the time of making that application, made any reference to or was relying on the originally issued notice as a fall-back position. It is apparent that the Council reasonably determined the application as it was presented.
9. In conclusion, for the above reasons, I find that the Council did not behave unreasonably in determining the application in respect of the second issue concerning a fall-back position, but that it did so in respect of the first issue referred to above. As such, in respect of that first issue, the applicant's costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

10. 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 Borough of Poole shall pay to Mr A Fortia, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the first issue referred to above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Borough of Poole, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dawe

INSPECTOR