

## Costs Decision

Site visit made on 21 May 2018

**by John D Allan BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 June 2018**

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### **Costs application in relation to Appeal Ref: APP/G1250/D/18/3196372 304 Poole Lane, Bournemouth, Dorset, BH11 9DT**

- 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 C Anderson for a partial award of costs against Bournemouth Borough Council.
  - The appeal was against the refusal of planning permission for the erection of a first-floor extension to dwellinghouse.
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### **Decision**

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

### **Preliminary Matter**

2. The application was made for a partial award of costs. Notwithstanding, the claim by the applicant is threefold and relates to both procedural and substantive matters. Each is considered in turn below with my conclusions overall finding justification for a full award of costs.

### **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 first and second issues raised by the applicant are procedural matters relating to the construct of the decision notice and to the referencing of relevant plans on the decision notice. The third issue raised is substantive, relating to the failure of the Council to have proper regard to relevant planning history for the property.
  5. There is no question that the way the reason for the refusal has been constructed on the decision notice is unusual and that the reasoning, by way of its numbered order, has been conflated with the non-statutory informative advice. This would reasonably have raised questions in the applicant's mind. Nevertheless, the reason for the refusal, when taken as a whole, is explicit. The first two numbered statements directly relate to the more detailed reasoning that then follows. There is no doubt as to why planning permission was refused with reasoning that to my mind is clear and supported by relevant policies of the development plan. With regard to this matter I do not find the Council's behaviour to be unreasonable.
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6. The Council unquestionably misquoted the relevant planning drawings on the decision notice. However, the applicant accepts that the correct drawings were included on the Council's web site and there is no doubt that the correct plans were considered. This does not amount to unreasonable behaviour that has resulted in unnecessary or wasted expense by the applicant.
7. The applicant has argued that the appeal was unnecessary given that the proposal was identical to an application that was granted planning permission in October 2003 for '*Alterations and first floor extension to dwellinghouse – Revised application*' (Ref 7/2003/11820/B). In the absence of any significant change in circumstances it is argued that it was unreasonable for the Council firstly, not to have considered the past history, and secondly, to have then refused planning permission.
8. The Council has not explained why the 2003 decision was not referenced within the officer's report even though the application form clearly referenced the previous decision under the section headed 'Pre-application Advice'. They point out however that since that time the Council has adopted the 'Residential extensions - A Design Guide for Householders' in 2008 and that furthermore the National Planning Policy Framework has since been published. They argue that these place greater emphasis upon the quality of design.
9. I recognise that the policy framework has changed since the 2003 decision. However, I cannot square that with the polar opposite assessment that was made by the Council in relation to two identical proposals. There is no evidence before me to suggest that circumstances in the locality have changed since 2003 and nothing that I saw during my appeal site visit would lead me to conclude otherwise. My findings in relation to the appeal proposal closely reflect the Council's findings in 2003, even having regard to the current development plan, adopted design guidance and current national planning guidance.
10. I accept that planning decisions often involve elements of subjective judgement. However, even if it is taken that the bar has since been raised with regard to the consideration of design quality, there is no clear reasoning why an identical development can have shifted from having no detrimental visual impact to somehow becoming so visually harmful that it warrants a refusal of planning permission. A change of heart could only reasonably be explained if, in the first instance, the development had been found acceptable based only on a finely balanced decision but that somehow now the policy test had tilted the balance in the opposite direction for reasons that were clearly demonstrable. That situation is not supported by any substantive evidence or reasoning within the officer's report. Neither does it reflect my own assessment.
11. In the circumstances that I have outlined, I find that the Council has failed to determine the case in a consistent manner or to substantiate the reason for the refusal having regard to the past history of the site, which was ignored. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

12. 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 Mr C Anderson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

*John D Allan*

INSPECTOR