



Costs Decision

Site visit made on 26 June 2018

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2018.

Costs application in relation to Appeal Ref: APP/G1250/W/17/3188016 28-30 Sea Road, Boscombe, Bournemouth BH15 1DF

- 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 European Emerging Markets Ltd for a partial award of costs against Bournemouth Borough Council.
 - The appeal was against the refusal of planning permission for alterations, conversion and extension of third floor office to a 2 bedroom flat & roof terrace with screen.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that awards may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The Guidance makes it clear that costs cannot be claimed for the period during the determination of the planning application, although behaviour of the parties at this time can be taken into account.
4. The application for an award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The appellant seeks a partial award on substantive grounds. The original application was not determined within the required timeframe, and evidence was not produced to substantiate the second of the Council's reasons for refusal at appeal. There was a failure of the Council to communicate and request a tree report and this information could have been dealt with through suitable conditions. Similar applications have not been determined in a consistent manner. The appellant considers the Council to have acted unreasonably, and that this behaviour has resulted in unnecessary expense in the appeal process.
5. My decision explains that I have found substantive reasons for dismissing the appeal. Although the appellant considers the proposal would not impact on the protected trees, they are present within the site and there are also both protected and unprotected trees nearby. Given the constrained nature of the

site, it was not unreasonable of the Council to consider and require details of tree protection.

6. I have some sympathy with the appellant as regards the inconsistency of the Council's handling of the appeal scheme with that recently permitted. Why neither a tree report nor protection measures were required with the previous scheme has not been explained in any detail. Such inconsistency was remiss of the Council. Notwithstanding this, the protection of the trees is relevant. The original application form asks whether there are trees or hedges on the proposed site, and/or whether there are any adjacent. To both questions the appellant stated no, despite there being protected trees on site, and also other trees very close to the site boundaries.
7. The Council have justified the second reason for refusal within both the officer report and the appeal statement. This evidence and the refusal reason are clear and precise, based upon the current development plan, and the evidence provided. The time taken by the Council to make a decision upon the original application would have been frustrating for the appellant. However, there is conflicting evidence from the main parties as to whether and how much communication occurred during the Council's consideration of the application. Whatever the situation was, the application was refused for other reasons, and development has not been prevented or delayed which should have been permitted.
8. The consideration of applications involves matters of judgement that are at times finely balanced based on complex evidence, and in this case the Council gave a different weight to the issues than the appellant. This was not unreasonable of the Council, nor was it unreasonable for a decision to be made upon the evidence provided. Consequently the decision to submit an appeal would have been one for the appellant to make.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

J J Evans

INSPECTOR