
Costs Decisions

Hearing Held on 13 - 14 June 2018

Site visits made on 14 June 2018

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 14 September 2018

Costs application in relation to Appeal Ref: APP/G1250/W/17/3183304 31-41 Westover Road, Bournemouth BH1 2BZ (costs application A)

- 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 Bournemouth Borough Council for a partial award of costs against Libra Homes Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for approval in principle: retain main façade at three levels of the Westover Road frontage allowing for the demolition of the remaining building structure and re-development with two levels of retail floor space; 84 no. 1, 2 and 3 bedroom apartments; 97 car parking spaces; associated servicing facilities, refuse and cycle storage.
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Costs application in relation to Appeal Ref: APP/G1250/W/17/3189580 27-28 Westover Road, Bournemouth BH1 2BZ (costs application B)

- 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 Bournemouth Borough Council for a partial award of costs against Libra Homes Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for mixed use re-development of the site of the former ABC Cinema with 2 no. commercial units, 62 flats, car parking and associated cycle/bin storage.
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Decision

1. Costs application A - the application for an award of costs is refused.
2. Costs application B - the application for an award of costs is refused.

The submissions for Bournemouth Borough Council

3. The Council asserts that the appellant failed to provide satisfactory Transport Assessments (TAs) at application stage to demonstrate that the proposal in each case would not result in adverse highways effects. It is argued that the submitted TAs were not undertaken in accordance with current best practice and guidance and it was thus necessary for the local highway authority, on behalf of the Council, to produce its own detailed assessment thus incurring unnecessary and wasted expense.

The response by Libra Homes Ltd

4. On the other hand, the appellant argues that disagreement as to the evidence is not a valid basis for an award of costs. It is asserted that the appellant has

provided detailed evidence at appeal stage as to why the proposed developments would have less impact in comparison to the extant permission and that the Council took it upon itself to produce its own assessment.

Reasons – costs applications A and B

5. Planning Practice Guidance (PPG) sets out that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It goes on to explain that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospects of succeeding.
6. From my understanding, the Council is asserting that the TAs were inadequate at application stage when compared to the requirements of the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). However, the Framework does not specify what a TA should contain; it merely says (at paragraph 32) that all developments that generate significant amounts of movement should be supported by a Transport Statement or TA. Notwithstanding the Council's concerns, TAs were provided and thus the Framework requirement was met.
7. Having said that, paragraph 32 of the Framework cannot be read in isolation of the PPG that supports it. The Council has identified a number of areas in which it considers the submitted TAs to be deficient set against the advice in PPG¹. PPG indicates that the evaluation needed in each instance should be agreed between the relevant parties. It goes on to set out the key principles for what should be taken into account in a TA (or other appropriate document) including that they should be proportionate to the size and scope of the proposed development to which they relate and be tailored to particular local circumstances. There is therefore clearly some flexibility within the PPG.
8. I note the variation between the trips information set out by the parties and whilst I have had regard to the Council's argument that the appellant's information was inaccurate and unsubstantiated, within the TAs the appellant had set out the background to the proposals, existing conditions and expected flow. Whilst I agree that the TAs are light on content when considered against the PPG 'checklist', they do address a number of pertinent matters and consequently, I do not fully share the Council's somewhat more damning assessment of them.
9. To my mind this all boils down to professional disagreement between the parties on the level of information that each considered should have been provided at the scoping stage based on whether the developments would result in 'significant amounts of movement'. In these appeals, the submitted TAs covered the ground thought to be necessary by the appellant even though the Council considered this to be inadequate. Although it is helpful to provide documents forming part of a planning application in accordance with guidance and best practice (where it exists), there is no absolute requirement to do so. The appellant provided what it considered to be the appropriate level of information relating to the appeal schemes.

¹ Paragraph: 015 Reference ID: 42-015-20140306

10. The Council was not obliged to carry out any work to fill the perceived gap in information by the appellant or support its case at appeal. That it chose to do so and incurred the resulting expense was entirely a situation of its own making and in the context of supporting its case at appeal stage. Moreover, the appellant provided evidence to support its case at the Hearing and indeed a significant amount of time was spent dealing with this topic.
11. I do not therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Hayden Baugh-Jones

Inspector