The Planning Inspectorate

Costs Decision

Site visit made on 24 July 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2018

Costs application in relation to Appeal Ref: APP/G1250/W/18/3199165
65 Talbot Road, Bournemouth BH9 2JD.

- 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 Hi Tech Home Improvements for a full award of costs against Bournemouth Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for alterations, change of use from C4 to House in Multiple Occupation (Sui Generis Use), single storey rear extension, formation of a second floor and dormer window.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.

3. The applicant claims that the Council has acted unreasonably on 2 substantive grounds:

    - by assessing the proposals against policies – specifically Policy CS24 of the Bournemouth Local Plan: Core Strategy 2012 (LPCS), and saved Policy 6.17 of the District Wide local Plan 2002 (DWLP) – which should not have been engaged; and,

    - by failing to provide any evidence to substantiate alleged harm to character or resident's living conditions.

Policies

4. The Council's submissions rely on use of the terms set out in Policy CS24 of the Bournemouth Local Plan: Core Strategy 2012 (LPCS). Both parties agree that this policy is not directly relevant to the appeal scheme, and in this respect the Council's decision notice does not reference a failure comply with Policy CS24 as a reason for refusal. Nevertheless, it is clear that interpretation of saved Policy 6.17 of the District Wide local Plan 2002 (DWLP), which is also concerned with control of HMO uses and is listed in the decision notice, has been made by the Council with reference to Policy CS24.

5. In support of this approach the Council make reference to the findings of the Inspector in appeal APP/G1250/A/13/2195229, who gave weight to Policy CS24

in reaching their decision regarding a similar change of use. Whilst I am aware of the legal opinion that was before the Council when it made its decision on the current proposal, it was entitled to give weight as it saw fit to different evidence. Therefore though I have reached a different conclusion to that of the Council, I am satisfied that it advanced a case that was, in its opinion, appropriate to demonstrate non-compliance with the development plan.

6. As the supporting text of saved Policy 6.17 makes reference to 'HMO and hostel uses' in the plural – a C4 HMO being one such use, and a Sui Generis HMO being another – I consider that its wording is flexible enough to be relevant to the appeal scheme. As such, and notwithstanding the applicant's legal opinion, I disagree with the applicant insofar as I conclude that saved Policy 6.17 is relevant to the appeal scheme.

7. For these reasons the Council's engagement of Policies CS24 and 6.17 cannot be judged to have been unreasonable.

Substantiation

8. The PPG states that failure to produce evidence to substantiate each reason for refusal on appeal can result in a substantive award of costs, as can vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

9. The Council's case is largely based on the assertion, drawn from Policy CS24, and noted above, that harm to character, appearance and 'amenity' arises above a 10% threshold of HMO uses occurs within a given area. This calculation does not in itself provide any indication of effects as they exist in reality. The observation in the Council officer's report that the area "does not display the typical signs of an area that is becoming more congested in terms of population and parking due to HMO conversions", despite the reported 57.1% level of HMO uses, appears to illustrate this point. The observation otherwise contradicts the Council's broader case.

10. Whilst the Council's decision notice and submissions make various reference to 'traditional family sized houses', 'three bedroom dwellings and flats' and 'three-four bed detached and semi-detached dwellings' as the context against which to assert the incompatibility of an 8 person HMO, no actual details of occupancy of dwellings and flats in the surrounding area, or the composition of the community were provided. Incompatibility of the change of use on these grounds was therefore not clearly evidenced.

11. Views sought relating to parking indicated that arrangements would be adequate, and that waste could be addressed by condition. On neither basis was it therefore shown that harm would arise.

12. With regard to increases in levels of noise and disturbance, the general character of the existing noise environment and current patterns of activity in the area were not considered. Whilst evidence of noise complaints was supplied, no accompanying explanation, analysis, or indeed any clear indication of what point figures relating to the area were intended to illustrate, was provided. Records of noise complaints related to No 65 were not fully explained or their relevance fully examined. No pattern was established. No compelling case that 2 additional residents would give rise to levels of noise and

disturbance on a day-to-day basis that would either harm the character of the area, or living conditions of neighbours was therefore clearly demonstrated.

13. Notwithstanding the fact that both parties agree that the extension could have been constructed without planning permission, the Council's assessment of potential for noise and disturbance arising from the design of the extension was not wholly unreasonable based on its residential context. This said, I consider that principal concerns related to design of the windows and doors – or the containment of noise – could have been adequately addressed by condition, and harm avoided. Therefore refusal on the basis of design and non-compliance with Policies CS38 and CS41 of the LPCS was unjustified.

14. The Council's submissions contain no analysis of what specific effect the development would have on Meyrick Park and Talbot Woods Conservation Area (the conservation area). Insofar as the Council's refusal notice references failure of the development to preserve or enhance the conservation area, no specific harm is actually identified. Harm instead appears to be simply inferred following the assessment carried out with regard the 'area' defined with reference to criteria in Policy CS24. This area does not correspond to that designated as a part of the conservation area, much of it falling outside the boundary. As such the Council provided no evidence that harm to the character or appearance of the conservation area would actually arise as a result of the development, and even insofar as it claimed that harm would arise, it failed to undertake the balancing exercise set out in paragraph 196 of the Framework. Consequently it failed to demonstrate non-compliance with saved Policy 4.4 of the DWLP.

15. I find therefore that whilst the Council's case with regard to noise was partially supported by evidence, this lacked the analysis or explanation necessary to make it meaningful. In this regard and in terms of its broader conclusions, the Council's case was based on vague, generalised and inaccurate assertions. As such it did not properly substantiate its claim that harm would arise to the living conditions of neighbours, or to the character and appearance of the area, including the conservation area, including where the development could have been made acceptable through use of conditions. In this regard I find that the Council's actions were unreasonable.

Conclusion

16. Notwithstanding that I have found that the Council's use of Policy CS24 was in this instance reasonable, the Council failed to properly substantiate its findings of harm, and in mounting the appeal the applicant was required to address a range of issues that were of questionable relevance. I conclude therefore that, as described in the PPG, unnecessary or wasted expense was incurred by the applicant and that a full award of costs is justified.

Costs Order

17. 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 Hi Tech Home Improvements, the costs of the appeal proceedings described in the heading of this decision.

18. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Benjamin Webb

INSPECTOR