
Costs Decision

Site visit made on 24 July 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2019

Costs application in relation to Appeal Ref: APP/G1250/W/19/3221929 42 Fernside Road, Bournemouth BH9 2LB

- 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 P Kane for a full award of costs against Bournemouth Borough Council.
 - The appeal was against the refusal of planning permission for erection of a dwelling for use as a House in Multiple Occupation (Use Class C4) for up to 6 beds.
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Decision

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

Procedural Matter

2. The decision to refuse planning permission was made by Bournemouth Borough Council, which ceased to exist on 1 April 2019, following a merger with Christchurch Borough Council and Borough of Poole Council to form the new Bournemouth, Christchurch and Poole Unitary Authority.

Reasons

3. The Planning Practice Guidance (the 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.
4. The applicant contends that the Council has acted unreasonably by failing to substantiate its reasons for refusal, and by not providing objective analysis to support the alleged harm caused by the development. It is argued that the Council therefore prevented development that should clearly have been permitted, resulting in the unnecessary expense of an appeal.
5. The PPG says that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal. The Council provided an appeal statement that expanded on all the issues cited in the reason for refusal on the decision notice. Whilst I did not find the evidence to be compelling, the Council did, nevertheless, meet the requirement to provide a reasoned justification for all of its reasons for refusal.
6. The PPG says that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The Council clearly articulated its concerns regarding the design, which related to the width and

proportions of the building, its lack of a bay window and its set-back from the building line. Whilst it was not at issue that the required number of car-parking spaces was provided, the Council clearly explained its concern that the configuration could deter their use. Similarly, the Council did not dispute that the concentration of HMOs would be below the 10% threshold, but it did set out its concerns regarding the impact of two such uses, side by side, on the character of the area and the living conditions of surrounding occupants. In all these matters, there was an element of subjectivity required in arriving at a decision.

7. The Council's reasons for refusal were based on the policies of the development plan and material planning considerations. Although the decision was contrary to the Officer's recommendation, full evidence was provided in defence of the reasons for refusal in the appeal process. The PPG says that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. Whilst I have decided that the appeal should be allowed, the decision relied on the exercise of a certain amount of subjective judgement. Therefore, I conclude that the Council has not acted unreasonably regarding the first two matters.
8. The PPG says that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. At the time the Council made its decision, there was no mechanism in place to secure mitigation for the impact of the development on the Dorset Heathlands Special Protection Area. Although the applicant did not dispute that mitigation was necessary, the Unilateral Undertaking to secure it was not submitted until the Final Comments stage of the appeal process. It was only at this point that the development could have been permitted. The Council did not, therefore, delay the development, because at the time it made its decision, the proposals did not accord with the development plan or national policy.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR