
Costs Decision

Site visit made on 6 November 2019

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

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Costs application in relation to Appeal Ref: APP/Q1255/W/19/3236032 Land rear of 85-87 High Street, Poole BH15 1AH

- 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 S Real of Real Building Contractors Limited for a full award of costs against Bournemouth, Christchurch and Poole Council.
 - The appeal was against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of a block forming no.10 self-contained flats with associated access and parking (revised scheme) without complying with a condition attached to planning permission Ref APP/18/00390/F, dated 24 May 2018.
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Decision

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

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 grounds that it failed to determine the application timely manner, and that the delay was unjustified.
4. The PPG states that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The Council clearly failed to issue a decision by the target date of 10 June 2019. I note that the applicant attributes this partly to the way in which comments from internal consultees were handled. However, the principal reason for the delay was more clearly the very late stage at which the Council sought a review of the scheme's viability. Indeed, whether or not the Council received a swift response from the consultancy it used for this purpose, emails indicated that the consultancy was approached only 8 working days before the target date. Responsibility is at least partly accepted by the Council.
6. Based on the evidence set before me, the Council did not provide the applicant with a proper explanation for the delay, or indeed indicate that there would be a delay. Furthermore, no evidence that an extension of time was sought for

determination of the planning application by the Council has been set before me. In each regard the Council's handling of the application was unreasonable.

7. An email from the Council dated 22 May 2019 had nonetheless already provided a firm indication to the applicant that planning permission would be refused. Inasmuch as the email states that: "the scheme is unacceptable", and, that "the scheme before the Council is not, in the view of the Council, sustainable development", the direction of travel was set out in unequivocal terms. In this context it is clear that the outcome of the review into the scheme's viability would not have made any fundamental difference.
8. The applicant was therefore clearly aware that the Council intended the refuse planning permission when the appeal was lodged. As such, it appears reasonably certain had the Council in fact issued its intended refusal an appeal would have been similarly lodged. In this regard I see no reason to believe that had the applicant had earlier sight of comments provided by internal consultees the course of events would have differed in any significant way.
9. In view of the above, the costs incurred by the applicant in lodging the appeal against non-determination are unlikely to have been greater than the costs which would have been incurred had an appeal been lodged post-refusal. Indeed, very little additional material was in fact provided by the applicant in support of the appeal.
10. As such, whilst I have found that the Council acted unreasonably in its administration of the planning application, and in its communication with the applicant, I consider that no unnecessary or wasted expense was consequently generated by the applicant in lodging the appeal.

Conclusion

11. For the reasons set out above, I conclude that the application for an award of costs should be dismissed.

Benjamin Webb

INSPECTOR