



Costs Decision

Site visit made on 19 November 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2019

Costs application in relation to Appeal Ref: APP/V1260/W/19/3233402 Wingfield Court, Manor Road, Bournemouth BH1 3HE

- 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 Tippey Construction for a full award of costs against Bournemouth, Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission for an outline submission for additional 2 storeys to roof of building to provide 10 flats.
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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 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. In summary, the applicant has explained that the Council has been unreasonable by being inconsistent in the way that it has determined similar cases. The Council's explanation that they permitted the 8 flats as an oversight in relation to consideration of the parking standards is not evidenced. Furthermore, in terms of the parking issues there has been a lack of evidence for excluding pay and display parking bays as available for residents of the development when these spaces are clearly available and suitable.
4. In relation to bin storage and cycle parking it is said that this could easily have been dealt with or indicated that this could be addressed by planning conditions, as the Council has done with similar applications on this site. This would have avoided the need for the applicant to address these matters at the appeal stage. This has led to an unnecessary expense dealing with all these issues and a full award of costs is said to be justified.
5. In response, the Council has said that the appeal statements have set out a clear analysis why the pay and display parking bays are unsuitable and despite the previous permission there has been a material change in the car parking controls since the earlier application.
6. In relation to the bin and cycle storage, it is explained that these had been included in previous proposals and the applicant was made aware of these issues during the processing of the present application and therefore could have addressed them.

7. The Guidance indicates that the type of behaviour that may lead to a substantive award of costs against a Local Planning Authority include not determining similar cases in a consistent manner and refusing planning permission on a planning ground capable of being dealt with by conditions, when it is concluded that suitable conditions would enable the proposed development to go ahead.
8. The Guidance also advises that an award of costs might not be made against the Local Planning Authority where they have exercised their duty to determine a planning application in a reasonable manner or where it has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning policy should have been granted.
9. In this case, there is little explanation concerning the parking analysis that led to the Council permitting the scheme for 8 flats under application 7-2016-21563-C without any on-site car parking. Nevertheless, the present proposal is a couple of years later and the 2 additional units leads to an increased parking requirement. This is sufficient justification to allow the parking situation to be re-examined as part of the current proposal. It is also clear that the proposal, in the absence of any on-site car parking, is in conflict with Policy CS16 of the Bournemouth Local Plan: Core Strategy (October 2012). The on-street parking situation has also changed since the determination of the earlier applications because the evidence indicates that the resident's parking spaces in Grove Road are over-subscribed and that the pay and display parking bays are now not free at weekends. These are material considerations to be taken into account which are different from before.
10. In conclusion, the scheme does not accord with the parking requirements of the development plan and it is therefore necessary to consider whether there are material considerations that indicate a decision should be made otherwise. The Council, supported by detailed statements from the Highway Authority, has made a detailed case that the change in parking circumstances in the area and the conflict with policy was not outweighed by the case in favour, including the previous approvals. This is a matter of judgement and, on balance, I consider that a sufficiently robust case has been made to explain the conclusion of the Council such that the reason for refusal regarding parking was not unreasonable in all the circumstances of the case.
11. It will be seen from my decision that I disagree with the balance of material considerations, but, in particular, I accept that the pay and display parking now being charged at weekends is a change in circumstances that does pull against the grant of planning permission.
12. I note that in respect of the bin and cycle store that these were matters included in the previous applications and in the case of cycle storage, was specified in the description of the development. These matters were not included with the present proposal. The proposed site plan (1320P/100bS) states that the additional flats to utilise existing waste facilities and no cycle storage area is identified.
13. Furthermore, the application form (question 14) regarding the present proposal confirms that the plans do not incorporate areas to store and aid the collection of waste. The information before me is that the appellant was aware of the concerns regarding waste and cycle storage during the processing of the

application but the application was not amended to include these requirements. In terms of waste requirements, there has been further guidance since the earlier approval. At the application stage it was a matter of judgement as to whether these issues could be left and dealt with by conditions to resolve later or were fundamental to the consideration of the proposal.

14. At the appeal stage I have received further planning submissions on waste and cycle matters that was not available to the Council in relation to this specific proposal when they determined the application. My judgement, based on the information I have, is that these matters can be addressed by conditions. However, given the information in the application I have highlighted above, and with the plans not amended to address these issues before a decision was made, the Council did not act unreasonably in identifying them as reasons for refusal.
15. As a result of the above, it follows that I cannot agree that the Council has acted unreasonably in refusing the proposal for the reasons specified and has provided sufficient evidence at the appeal stage to justify its case. As such there can be no question that the appellant was put to unnecessary or wasted expense.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR