
Costs Decision

Site visit made on 18 August 2020

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

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Costs application in relation to Appeal Ref: APP/V1260/W/20/3252784 46 and 48 Dalmeny Road, Bournemouth BH6 4BW

- 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 Dalmeny Limited for a full award of costs against Bournemouth, Christchurch and Poole Council.
 - The appeal was against the refusal of the Council to grant permission for development described as two storey link extension between 46 – 48 Dalmeny Road. Remodel of roof with addition of gable and remodel of dormer to no 46. Demolition of garages of 46 and 48 and new build house to the rear of the land, fronting Harbour Road.
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Decision

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

Procedural Matter

2. The Council has not provided any comments in relation to the costs application referenced in the banner heading above. I have therefore assessed the applicant's claim based on the information otherwise before me.

Reasons

3. The Planning Practice 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.
4. The applicant claims that the Council acted unreasonably on grounds which I summarise as: (a) preventing or delaying development which should clearly be permitted, having regard to material considerations; (b) making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis/ failure to produce evidence to substantiate each reason for refusal on appeal; and (c) refusing planning permission on a planning ground capable of being dealt with by conditions.
5. In relation to Ground (a), the appellant states that in reaching its decision the Council failed to apply the presumption in favour of sustainable development (PIFSD), and the 'tilted balance' set out in paragraph 11 of the National Planning Policy Framework (the Framework). Indeed, though paragraph 11 was acknowledged in the officer report, the matter of 5-year housing supply was not addressed in any detail and, with regard to the language employed by the case officer, the tilted balance was not explicitly applied.
6. The Council has however provided evidence at appeal which directly addresses this matter in some detail. This is set out within Appendix D of its appeal

statement. It is clear that, in the Council's view, the tilted balance would not have produced a different decision. Insofar as the weight to be attached to material considerations is a matter for the decision maker, I have little doubt that this would have been the case had a need be apply the tilted balance existed.

7. In this regard, Appendix D draws attention to paragraph 11(d)(i) of the Framework, which is supported by footnote 6. In cases where paragraph 11(d)(i) and paragraph 6 apply, the tilted balance is not engaged. Paragraph 6 sets out a list of national policies that protect areas or assets of particular importance. These include habitats sites, of which the 'European sites' referenced in the main Decision, are examples. In this context the applicant did not provide any undertaking to avoid or mitigate identified likely significant effects on the integrity of habitats sites/the European sites until after the Council had presented its case. Thus, notwithstanding the fact that no Appropriate Assessment was undertaken by the Council, the Council could identify the existence of conflict with national policy related to habitats sites both at the time the application was determined, and at the time its appeal statement was prepared. For this reason, I find that the Council did not act unreasonably in failing to apply the tilted balance when determining the application, and, though it did in fact apply the tilted balance in the context of the appeal, no necessity for this existed.
8. With regard to Ground (b), the applicant draws attention to Appendix C of the Council's appeal statement. This is a street plan with scribbled annotation in biro. It is not particularly legible. Even so, the point it seeks to illustrate – the fact that the proposed plots would be smaller than those adjoining – is clear. In this regard I take the Council's reference to the illustration of 'spatial layout' as applying to the relationship between buildings and plots, rather than the final details of plot layout, given that the latter are obviously absent from plan used as the base for Appendix C.
9. The applicant also claims that the Council failed to substantiate concerns relating to claimed harm in relation to gables, contemporary design, and the linkage of the 2 buildings. However, in this regard the Council's appeal statement in fact falls back on its officer report which provides detailed reasoning. Thus, whilst my own view of the relationship that would exist between the development and its surroundings differs from that of the Council, I find that the Council did not fail to substantiate its position.
10. The applicant additionally flags the absence of national or local external amenity space standards as a basis for assessment. The Council does however reference its own general guidance, and the Framework sets out objectives in relation to amenity. The Council's interpretation of these sources has been clearly set out within its submissions, and explained in relation to occupancy and the likely needs of occupants. Once again, I have taken a different view, particularly with regard to the weight to be attached to the availability of publicly accessible open space nearby. Nonetheless, with regard to the details provided, I again find that the Council did not fail to substantiate its position. For this and the above reasons I find that the Council did not act unreasonably in relation to Ground (b).
11. With regard to Ground (c), the planning application was made in outline with landscaping reserved for future consideration. This being so, screening by

- fences, walls or other means, the laying out or provision of gardens and courts, and the provision of other amenity features all fell within the scope of the reserved matter. Indicative landscaping details were nonetheless provided on the plans, and the Council was thus entitled to place whatever weight it saw fit on what these details showed. Moreover, even had elements which fall within the scope of the reserved matter been excluded from the reasons for refusal provided on the decision notice, this would not have produced a substantially different decision.
12. The applicant claims that the Council's concerns in relation to overlooking could have been addressed by condition. Insofar as this related to overlooking of 44 Dalmeny Road from the proposed new dwelling, obscure glazing of the utility room window could indeed have been secured by condition. However, the Council's concerns also extended to a kitchen window in the same elevation. The obscure glazing of this window clearly would not have been reasonable on account of the adverse effect that this would have had on outlook. No other solution has been suggested. Consequently, the Council could not have fully addressed its concerns in relation to No 44 by imposition of conditions. This fact is unaltered by my own finding that no unacceptable harm would arise from overlooking from the kitchen window in question.
13. A screen to the balcony of the new dwelling could also have been secured by condition. This would not be unusual in a general sense. However, with regard to the contemporary building designs proposed, I can appreciate that installation of a screen does not and would not have presented itself as an obviously acceptable design solution. In this regard the applicant's suggested use of a screen indeed only appears to have arisen in the context of the appeal. Again, even had this matter been omitted from the reasons for refusal, this would not have produced a substantially different decision. For this and the above reasons, I find that the Council did not act unreasonably in relation to Ground (c).
14. In view of my reasons set out above I conclude that the Council did not act unreasonably in relation to Grounds (a) – (c), as claimed. Though the Council's failure to provide any response in relation to the applicant's costs application was itself unreasonable, in neither this regard nor the above, can I conclude that the applicant was caused to incur unnecessary or wasted expense in the appeal process.

Conclusion

15. For the reasons set out above I conclude that the applicant's claim for a full award of costs should be dismissed.

Benjamin Webb

INSPECTOR