



Costs Decision

Site visit made on 8 September 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 18th September 2020

Costs application in relation to Appeal Ref: APP/V1260/W/20/3253614 Grove House, Milburn Road, Bournemouth BH4 9HJ

- 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 TCI Construction Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission described as raise ridge and eaves of Grove House, Milburn Road to facilitate construction of three flats at first floor over rear of 76 Poole Road.
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Decision

1. The application for costs is refused.

Procedural Matter

2. The original application form describes the address as Grove House whereas elsewhere it is referred to as the rear of 76/78 Poole Road. In the interests of clarity, the appeal proposal applies to both.

Reasons

3. The National Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses but 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 PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
5. The PPG¹ advises that awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The costs claim is made primarily on substantive grounds though also relates to procedural issues.

¹ Paragraph: 031 Reference ID: 16-031-20140306

6. The applicants seek a full award of costs on the basis that the Council has behaved unreasonably by: failing to consider the application in reasonable time; by failing to communicate issues of concern on which it has ultimately relied upon in its evidence; by raising new matters not raised in the earlier application, a submission on which the delay caused the applicant to be denied the right of appeal; by failing to properly apply national policies in respect of heritage impacts by not quantifying the harm nor to balance that harm against public benefits; by seeking to rely on nationally described space standards which it accepts have not been adopted; and by not providing any clear or compelling case in respect of the parking levels proposed. The applicants argue that the Council has behaved unreasonably by failing to consider or engage with the arguments put forward by the applicant in their grounds of appeal. I will address each of these issues in turn.

Timeliness

7. The applicants argue that the application was not considered in reasonable time. I note that the planning application was submitted on 31 January 2020 by a different agent to the practice handling the appeal which was lodged on 3 June 2020. The Council state that there was a full and frank exchange of information regarding the concerns however considering the unfolding Covid19 pandemic an extension of time was agreed. The Council also point to a lack of communication from the original agents in response to the concerns identified. Whilst I have not been provided with the details as to what alternative timescale was agreed it is universally accepted that the delivery of normal services since March 2020 has been disrupted. Any delay in reaching a decision is unfortunate but I have not been provided with substantive evidence that the handling of the application amounted to unreasonable behaviour on the part of the Council.

Failure of communicating issues of concern/raising new matters

8. The applicant refers to the fact that the Council did not express its concerns whereas the Council advise that concerns were conveyed to the agent handling the application. I do not have copies of correspondence provided to the agent by the Council, but I have no reason to doubt the Councils version of events. The applicant argues that additional matters were introduced which were not outlined in the earlier submission though I have no evidence to support this contention and cannot therefore conclude that unreasonable behaviour on the part of the Council occurred.

Delay which denied the opportunity to appeal

9. I have no details before me to demonstrate that there was a protracted handling of the earlier application referred to. Every applicant has a right of appeal against the non-determination of an application though it is acknowledged that there is a period beyond which the right of appeal expires. I have not been provided with the detail relating to the earlier case. In any event the handling of the earlier application is a matter for the Council and is not within the remit of this appeal.

Application of national policies

10. The applicant states that the Council has failed to properly apply national policies in respect of heritage impacts by not quantifying the harm caused nor

to balance that harm against any public benefits. The Council in their statement of case set out the justification for their comments including the identification of the Conservation Officers comments. Whilst they did not specifically quantify harm, nor did they weigh this against any public benefits this appears to be by way of omission rather than by improperly applying policy.

11. The weighting of material considerations is always a matter for the decision-taker depending on the facts of the case at hand and is a matter of planning judgement. It is abundantly clear from the evidence that there were differences of opinion between the applicant and the Council and an appeal was almost inevitable. Nonetheless the Council did not properly complete their assessment as required to do by the framework². Whilst this was an error the rationale for their position was articulated in the statement of case and I do not consider in the context of the evidence that this amounted to unreasonable behaviour. I am also mindful that this was at a later stage than the applicants making their appeal so did not prevent the applicant from formulating their own case.
12. The exercise of that judgement in the context of the statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is now incumbent upon me and I have dealt with that separately in my appeal decision.

Reference to the Nationally Described Space Standards

13. The Council in their statement made it very clear that the Technical Housing Standards to which they refer are not adopted by the Council. They used them to illustrate that they were an indication of the amount of internal space required within dwellings in order to avoid harmful living conditions for the occupants. I do not consider that this amounts to unreasonable behaviour.

Parking matters

14. The applicants state that the Council have not provided any clear or compelling case in respect of the parking levels proposed. I have found that the Council articulated its reasons for its position on parking and that this was supported by their Supplementary Planning Document and referred to in their statement of case. Whilst this is a matter on which the applicants and the Council clearly differ it does not amount to unreasonable behaviour by the Council.

General comments

15. The applicants argue that their case is well reasoned and follows an approach which has recently been endorsed by Inspectors elsewhere in Bournemouth on sites which are less sustainably located than the appeal site. However, no further details of the sites referred to have been provided and consequently I can give little weight to the implied comparisons.

Conclusion

16. These matters, taken together lead me to the view that it has not been demonstrated that the Council prevented or delayed development which should clearly be permitted having regard, in this case, to national policy, local policy and other material considerations. It is self-evident that legitimate differences

² Paragraph 196

of opinion on the part of the applicant and the Authority regarding the planning merits of the case remain and would have inevitably led to an appeal.

17. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The costs application does not indicate what unnecessary expense was incurred (other than arguing the appeal itself was unnecessary) and there are no additional technical reports submitted by the applicant to support the grounds of appeal. I am not therefore satisfied that any unnecessary expense has been caused.
18. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

Janet Wilson

INSPECTOR