



Costs Decision

Site visit made on 11 December 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 7th January 2021.

Costs application in relation to Appeal Ref: APP/V1260/W/20/3258789 6A June Cottage Warren Edge Road, Bournemouth BH6 4AU

- 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 David Lowman (Prestige Organisation) 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

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 contends that the Council was unreasonable in refusing to accept amended plans during the application process, leading to the appeal and the submission of a second application to have the amended plans considered. Furthermore, they contend that because the application was not determined in time, they had no alternative to but to appeal against non-determination, and that additional costs have been incurred as a result.
4. The Council and applicant have provided details of correspondence during the application process. This shows that the Council found the initial submission unacceptable and advised the applicant of this within the statutory 8-week period, offering an opportunity to resolve the issues. Amended plans were subsequently submitted but were not accepted as they only addressed some of the Council's concerns. The Council made it clear from the outset that amendments would only be accepted if they addressed all the concerns raised. I understand that the applicant felt 'held to ransom' by this approach, but the Council was not obliged to accept amended plans, particularly where they would not change its decision.
5. Furthermore, despite proposing changes to the design and windows of the scheme, matters which had been contentious in previous applications and an appeal, the applicant did not seek pre-application advice. Engaging with the Council prior to submission may not have been quicker or used less resources than the process that the applicant has now gone through. However, it would have enabled them to understand the Council's position and address it in their application, such that amendments should not have been necessary. It might also have identified that

the development under construction did not accord with either of the previous planning permissions or either set of plans submitted with the application, allowing the applicant to seek permission for the scheme as built, rather than pursuing an application for a different development. Consequently, I find that the Council did not behave unreasonably by refusing to accept the amended plans.

6. The Council still failed to determine the application despite the applicant's requests that it proceed to refuse the proposal. However, the potential breach of planning control only became apparent late on in the application process, after those requests were made. The Council could still have determined the application within the relevant timeframe while enforcement investigations were underway. However, even if any subsequent appeal had been allowed, the applicant would not have had planning permission for the development as built. In these circumstances, I do not find it unreasonable that the Council took a pragmatic approach and offered the applicant the opportunity to submit plans of what was actually being built. Therefore, I do not consider that the Council's failure to determine the application within the statutory time period was unreasonable behaviour or that the applicant had no option other than to appeal.
7. The applicant was made aware of the Council's concerns during the application process and provided a reasoned justification to support their case. Therefore, they could make their appeal submissions with an awareness of the Council's position, without any unnecessary work on matters not in dispute. Indeed, their submissions rely heavily on that justification to set out the planning merits of their case. The additional points of their case largely relate to the way the application was dealt with and what has now been built, which was not the scheme before me and therefore could not be considered. Interested parties' points are dealt with simply and briefly. There is therefore no substantive evidence that the appeal has resulted in unnecessary or wasted expense being incurred in terms of the applicant's professional representation.
8. Moreover, having considered the applicant's justification, the Council confirms it would have refused permission based on the amended plans. Therefore, whether the Council had considered those plans under the applicant's initial or second application, the outcome is likely to have been the same. The applicant indicates that they would have looked to appeal either refusal. The applicant also included the amended plans as part of the appeal, which I have accepted. Consequently, there is no compelling evidence before me that the applicant incurred unnecessary or wasted expense in submitting this appeal.
9. The appeal site already benefits from planning permission and the evidence before me indicates that construction has continued during the appeal process. There was also a workforce on site at the time of my site visit. Therefore, it has not been demonstrated that the appeal process has led to any time lost in construction, or any wasted or unnecessary expense being incurred in this respect, particularly as what has been built is not the development to which the appeal relates.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

L McKay

INSPECTOR