
Costs Decision

Site visit made on 26 January 2021

by Martin Small BA (Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2021

Costs application in relation to Appeal Ref: APP/V1260/W/20/3262202 4 Western Road, Poole, BH13 7BJ

- 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 Fayrewood Property Limited 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 for demolition of existing building and erect block of apartments together with associated parking and access.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, regardless of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
3. The application for costs follows the failure of the Council to give notice of their decision within the prescribed period. However, the absence of a statement from the Council, to which I return below, does not mean that it should be assumed that the proposed development is acceptable; that is a matter for my professional judgement.
4. Although, from the evidence before me, the effect on the living conditions of the occupiers of adjacent properties was not a reason for refusal of the previous application for the site, I have found that the proposal would cause harm in this respect as well as to the character and appearance of the area. I have dismissed the appeal on the basis of the failure of the proposal to comply with the policies of the development plan with no material considerations to indicate otherwise. I do not accept, therefore, that the proposal should have been approved as according with the development plan, national policy and other material considerations.
5. The application was registered on 24 August 2020 with the prescribed 8 week period therefore expiring on 19 October 2020. As no decision had been made

within that period and the applicant had not agreed to an extension of time, the applicant lodged an appeal on 28 October 2020. Whilst the delay in determining the application was regrettable, I am satisfied that there were extenuating circumstances in what was an extraordinary period of time due to the Covid-19 pandemic. These circumstances were known to the applicant. Accordingly, I find that the Council did not behave unreasonably in not approving the application in a timely manner.

6. However, the PPG sets out that if it is clear that a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. From the evidence before me, the Council did not do this. This was unreasonable. Consequently, although the appeal was lodged only a week after the expiry of the 8-week period, I find it understandable that the applicant chose to do so to resolve the matter.
7. The PPG explains that in an appeal against non-determination the local planning authority should explain why planning permission would not have been granted had the application been determined within the relevant period. The PPG specifically cites not reviewing a case promptly following the lodging of an appeal against non-determination as part of sensible ongoing case management as an example of unreasonable behaviour by an authority.
8. In this case, the Council failed to indicate within the requisite appeal timescale what its decision would have been had it been in a position to determine the application. The Council only provided this information belatedly in its rebuttal of the applicant's costs application. As no specific explanation has been given as to why the Council did not review the case promptly following the lodging of the appeal, I find the Council behaved unreasonably in this respect.
9. The applicant has incurred costs in the appeal process. Had there been timely communication from the Council this appeal could potentially have been avoided as the applicant may not have chosen to appeal. On this basis, the applicant has wasted time and expense in pursuing the appeal.

Conclusion

10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in this appeal and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bournemouth, Christchurch and Poole Council shall pay to Fayrewood Property Limited the costs of the appeal proceedings described in the heading of this decision; such costs to be agreed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Bournemouth, Christchurch and Poole Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Small INSPECTOR