The Planning Inspectorate

Costs Decision

Site visit made on 26 January 2021

by Martin Small BA (Hons) BPl 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/20/3262184
496 Blandford Road, Poole, BH16 5BN

- 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 Pressland 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 to remove existing roof and replace with a new roof and raise roof height to provide an additional floor for storage uses, upgrade existing front offices and create new offices on new floor level.

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 a planning application can be taken into account in the consideration of whether or not costs should be awarded.

3. This application for costs follows the failure of the Council to issue a notice of their decision within the prescribed period. I have found conflict between the proposal and the development plan in respect of parking provision and so I do not accept that the proposal should have been approved.

4. The application was received on 6 May 2020 with the prescribed 8 week period therefore expiring on 1 July 2020. However, despite attempts by the applicant to engage with the Council after that date, it was not until 14 October 2020 that the Council responded. That response contained a brief apology and explanation for the delay in responding and determining the application. The Council accepts that there was a significant delay and poor communication with the applicant. However, whilst this delay 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 appellant.

5. Nevertheless, although the Council advised on 14 October 2020 that the situation would be concluded shortly, there was no indication of when a

decision would be made on the application nor even whether the Council had any concerns with the proposal. After having waited approximately 5 months for a decision and still not having received an indication of when the application would be determined, I find it unsurprising and understandable that the applicant chose to exercise his right to appeal on 28 October 2020 in order to resolve the matter. In doing so, the applicant has incurred the costs of engaging professional representation.

6. The PPG explains that in an appeal against non-determination the local planning authority should explain why 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.

7. In this case, the Council has still failed to indicate what its decision would have been had it been in a position to determine the application. The Council has not submitted an appeal statement nor a list of conditions were the appeal to have been allowed, only copies of relevant policies. I find this to be unreasonable behaviour, resulting in the applicant having had to address a wide range of issues instead of focusing on any specific concerns the Council may have had. Although I have dismissed the appeal on the basis of one issue, I have found in the applicant's favour for the others, which represents unnecessary and wasted expense for the applicant in dealing with those.

8. I find that the failure to review the case promptly, to give reasons why permission would not have been granted and to provide any evidence amounts to unreasonable behaviour by the Council. Such information could have narrowed the issues in contention or even led to the withdrawal of the appeal. Therefore, although parties are normally expected to meet their own expense in appeals, in this case the Council's behaviour has led to unnecessary and wasted expense by the applicant.

Conclusion

9. 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

10. 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 Pressland the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. 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