
Costs Decision

Site visit made on 1 February 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2021

Costs application in relation to Appeal Ref: APP/V1260/W/20/3261874 Land adj Lone Pines Close, Matchams Lane, Christchurch BH23 6LP

- 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 D R Smith Properties Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission for creation of new vehicle access to highway; new gates and realignment of existing boundary fence; new track.
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Decision

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

Reasons

2. 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.
3. The application, subject of the appeal, followed a previous refusal of permission and dismissed appeal. Insofar as it related to highway safety, the previous Inspector identified harm would arise due to the location of site access gates relative to the highway edge. The current scheme addresses this matter.
4. The previous Inspector made no findings in respect of visibility splays or turning arrangements. The Council's decision does not, therefore, run contrary to that appeal decision. However, while there has been Local Government reorganisation in the area, the available evidence surrounding the previous application does not demonstrate a lack of rigor on the part of the predecessor highway authority. That highway authority's response may have been short, but its position on the matter at the time is clear: there was no objection to the proposal, and visibility and turning facilities could have been subject to planning conditions. I note that the condition in respect of parking and turning may have referred to details that had not been submitted, but there is no substantive evidence as to why the condition could not have been redrafted by the Council along the lines of that proposed in connection with the current appeal.
5. There has been some uncertainty noted in respect of the availability of land in the appellant's ownership. It would have been desirable for the initial application documents to be clear in this regard but following the previous Council decision, the appellant would not expect this matter to be in dispute now. Moreover, the appellant sought to confirm the situation during the application process and further clarification could have been sought by the

Council if necessary. The submitted details do indicate the extent of land in the appellant's ownership, the extent of the proposed visibility splay, and existing obstructions within it.

6. A third reason for refusal relates to the need for the development. This was not raised by the previous Inspector as a reason for dismissing the appeal, but rather that there was insufficient evidence in this regard to outweigh the harm identified. Moreover, in my main decision, I found no basis in development plan policy for this approach.
7. Although the previous appeal was dismissed under the umbrella of highway safety, therefore, the reasons for refusal in this case relating to visibility and turning were new issues that, subject to conditions, were previously found to be acceptable to the predecessor highway authority. Local Government reorganisation does not amount to a material change in the planning merits of the proposal or the situation on the ground.
8. Planning Practice Guidance indicates that local planning authorities are at risk of an award of costs if similar cases are not determined in a consistent manner. The Council's decision making in this case has not been consistent and, moreover, conditions could have been imposed to address the reasons for refusal, avoiding the need for an appeal.
9. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated 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 D R Smith Properties Ltd, 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.

M Bale

INSPECTOR