



Costs Decision

Site visit made on 2 March 2021

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2021

Costs application in relation to Appeal Ref: APP/V1260/W/20/3262095 158 East Howe Lane, Bournemouth, BH10 5JG

- 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 Crestland Homes Ltd for a full award of costs against Bournemouth, Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission to erect a pair of detached properties with associated parking.
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Decision

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

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. The appellant made a written application for an award of costs in its Appeal Statement, and the Council provided a written response.
3. The appellant maintains that the way in which the Council dealt with this planning application was unreasonable in substantive terms as it refused planning permission on grounds of the design, size, scale and siting of the proposed scheme, when the previous appeal Inspector concluded that a very similar scheme was suitable '*in terms of plot width, front building line, height, form, materials and detailing*'.
4. However, the Delegated Report makes it clear that the Council did have regard to the previous Inspector's decision, and that this was why it raised no objection to the form and design of the dwellings themselves. The Council did, however, share the previous Inspector's concerns regarding the importance of lateral spacing between dwellings, which that Inspector said gives this area its character of spaciousness. This lack of adequate lateral spacing was a contributory factor in that Inspector's decision to dismiss the previous appeals, and the Council considered that this matter had not been satisfactorily addressed by the current proposal.
5. My reading of the Delegated Report is that this was one of the main factors which led the Council to refuse planning permission. In so doing, I acknowledge that the Council made incorrect references to some widths and dimensions, and appeared to include an earlier version number of the site layout plan in its Decision Notice. But the discrepancies involved seem fairly minor to me, and I am not persuaded that these minor differences in dimensions and site layout go to the heart of the Council's decision.

6. The Council was perfectly entitled to take the view it did on the spacing and positioning of the proposed dwellings, and the likely impact of this in character and appearance terms. This view was well reasoned in its Delegated Report and clearly set out in its reason for refusal. As such, I do not consider that the Council acted unreasonably in this regard. Indeed I generally share the Council's view on these points and, as set out in my appeal decision, my assessment is that the proposed development would appear cramped and would not be acceptable in character and appearance terms.
7. A further strand of the appellant's claim for costs is that the Council acted unreasonably by withholding reasonably requested information for weeks. Evidence in the appellant's Appeal Statement does appear to indicate that following a request for details of consultee comments on 16 September 2020, comments from the Highway Authority were not provided until 8 October 2020, some 16 working days later, and 3 days after the Council's refusal of planning permission. The Council's comment on this point is that the Highway Authority's 'no objection' comments were passed on within the timeframe, and had no bearing on the application's progress, or its subsequent refusal on non-highway grounds.
8. However, it is unclear to me what 'within the timeframe' means in this context, when the evidence indicates that the comments from the Highway Authority were not passed on to the appellant until after the decision had been issued. Whether or not these comments had any bearing on the Council's decision to refuse planning permission, it does seem to me that the Council acted unreasonably by not providing them much sooner, when reasonably requested. That said, I do not consider that the Council's actions in this regard have caused the appellant to incur wasted or unnecessary expense. An appeal would have been necessary in any event if the appellant wished to pursue this matter, regardless of the content of these comments, which were received before the appellant made its decision to lodge an appeal.
9. The appellant further maintains that the Council wrongly gave no weight to the potential contribution of the development to housing land supply, and that this is a significant material consideration to which the Council paid no regard. I agree, in that insofar as I can see, the Council made no reference to housing land supply matters in either its Delegated Report or its Appeal Statement. Nor did it consider the weight to be given to relevant development plan policies which have to be seen as out-of-date, in line with paragraph 11(d) of the National Planning Policy Framework. By failing to mention or have regard to these points, I have to conclude that the Council acted unreasonably.
10. However, there is nothing before me to suggest that the Council would have made a different decision if these matters had been taken on board, and in light of the stated reason for refusal and the very modest impact the proposed development would have on housing supply issues, I consider there to be a very strong likelihood that the Council's decision would still have been to refuse planning permission. As such, an appeal would still have been necessary, and in these circumstances I am not persuaded that the appellant has incurred any wasted or unnecessary expense.
11. On a final point, the appellant's claim for costs makes reference to the Council's comments in its Decision Notice, that it '*takes a positive and proactive approach to development proposals, focussed on solutions*'. The appellant contends that this has not been the case here, with the Council, instead, appearing to have been blindly devoted to the idea of a pair of semi-detached dwellings at the site, which is the

'alternative solution' the Council referred to. Furthermore, the appellant maintains that nothing would have been gained by it taking up the Council's offer of pre-application advice, as the appeal decisions of May 2020 showed that the Council's previous decisions were unjustified in many ways.

12. Although not specifically stated, it seems to me that the appellant has made these comments to reinforce how – in its view – the Council was wrong to refuse planning permission, in light of the previous Inspector's decision. In this regard the appellant reiterates its view that the appeal proposal complies fully with all relevant development plan policies and material considerations, which it argues makes the Council's reason for refusal spurious and unreasonable. The appellant ends its claim by maintaining that the Council made substantive errors of judgment in the processing of this application, amounting to unreasonable behaviour, and resulting in the appellant having to incur unnecessary expense in respect of preparing for this appeal. For these reasons it considers that an award of costs is justified.
13. I have, however, already indicated that in my assessment the Council did have appropriate regard to the previous Inspector's decision, but felt that not all matters raised by this previous Inspector had been satisfactorily addressed in this latest proposal – which the Council considered to be unacceptable, for reasons clearly set out in the Delegated Report.
14. Drawing all the above points together, I have identified that the Council has acted unreasonably in some aspects of its processing of this application, but there is no firm evidence to suggest that these matters unduly influenced its decision to refuse planning permission, which I consider was reasonably made, and follows on logically from the reasoning in the Delegated Report. As a result I do not consider that the appellant has incurred any unnecessary or wasted expense, as described in the Planning Practice Guidance, in pursuing this appeal. The application for costs therefore has to fail.

David Wildsmith

INSPECTOR