The Planning Inspectorate

Costs Decision

Site visit made on 29 June 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Costs application in relation to Appeal Ref: APP/V1260/W/21/3271413
Land rear of 64 Irving Road, Bournemouth BH6 5BH

- 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 Amirez Developments Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
- The appeal was against the refusal of planning permission for demolition of existing buildings and erection of 4 dwellinghouses with associated access and parking.

Decision

1. The application for 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 PPG goes on to state that local planning authorities are at a risk of costs if in any non-determination appeals, the reasons for failing to reach a decision within the relevant time limit are not provided and if no substantive reasons for permission being withheld are subsequently identified.

4. The appellant's agent alleges that the Council did not provide any communication in relation to the appeal application during the processing period between its validation on 22nd December 2020 and the date on which the non-determination appeal was submitted on 19th March 2021. The appellant considers that the appeal was avoidable and that all of the costs of the appeal have therefore been incurred unnecessarily.

5. The Council's rebuttal focuses on the lack of pre-application discussions and indicates that issues raised in connection with a previously withdrawn scheme for five dwellings have been overlooked. The Council refute the lack of communication and suggest that an email was sent from the case officer on the 1st February, to which no response was received. Lastly, in addition to waiting for a response to the email of the 1st February, the delays on the part of the Council are attributed to extraneous events including high workloads, & Covid-19 working circumstances.

6. The situation with the email of the 1st February is curious. Whilst the Council have copied and pasted evidence of a 'sent' email, the agent purports that it was not received and highlights the lack of an email footer as proof that this was not sent. In my view, the email is slightly incoherent and if a response was

expected it could have been made far clearer to the appellant what options were being presented and by what timescale a response was expected.

7. The agent's email of 17th February, which again, has been provided by way of evidence, does not appear to have been received by the Council. The content of the email clearly suggests that the agent was unaware of an email from the 1st February or any of the consultee responses to which the Council drew attention in its email. It is also suggested that the Council did not respond to the email on the 17th February and that consequently, the appeal against non-determination was lodged a period around 4 weeks after that.

8. Though the desire to undertake pre-application discussions is encouraged, it is not compulsory and the Council has a duty to determine an application irrespective of whether or not it follows a pre-application. The Council did not determine the application and the non-determination appeal was submitted around 4.5 weeks after its statutory determination date. As it appeared, at least from the agent's perspective, that the Council had not communicated with them at all during this period, the submission of the non-determination appeal is understandable.

9. Unfortunately, I will not be able to prove conclusively which party sent or received the emails from February or whether there were other issues that prevented the transmission or receipt of such without access to IT-related information that is not before me. However, there appears little attempt by either party to follow the emails with a secondary email or telephone call. As it is suggested that a response was awaited by the Council prior to a formal determination being made, it strikes me that more attempts could have been made to reach the agent, though I am mindful of the timing in relation to the unprecedented Pandemic and associated issues arising therefrom.

10. However, given the lack of conclusion in respect of the February emails, and given that the appeal could not have been avoided in any event, I do not find that the Council has behaved unreasonably, either substantively or procedurally in relation to the appeal application or the appeal itself.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and neither a full, nor partial award of costs is justified.

Hollie Nicholls

INSPECTOR