



Costs Decision

Site visit made on 19 August 2021

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 11 October 2021

Costs application in relation to Appeal Ref: APP/V1260/W/21/3273168 49 Abbotsbury Road, Broadstone, Poole BH18 9DB

- 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 Mr Ed Gorvin, Portus Homes for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for outline planning permission for erection of a new dwelling with associated access and parking.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the 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. The PPG sets out what type of behaviour may give rise to a substantive award against a local planning authority.
3. The application for costs follows the failure of the Council to give notice of their decision within the prescribed period.
4. The application was registered on 10 February 2021 with the prescribed 8 week period expiring on 7 April 2021. As no decision had been made within that period and the applicant had not agreed to an extension of time, the appeal was lodged on 15 April 2021. 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 in this case.
5. However, the PPG states 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 behaviour. However, set against this it would appear that the appellant was aware, from pre-application advice, of the Council's likely stance on the application.
6. The PPG advises 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. In this case, unlike in the case of appeal Ref APP/V1260/W/20/3262202, the Council explained what its decision would have been, had it been in a position to determine the application, in its Statement dated 18 June 2021. This was within the appeal timescale set out in the letter dated 20 May 2021. This is acceptable within the context of the appeal and is not unreasonable behaviour.

7. Moreover, two of the putative reasons for refusal relate to the effects of the proposal on the Dorset Heathlands and on Poole Harbour which are protected European sites; these were matters that were raised by the Council in their pre-application advice. The appellant confirmed on 17 August 2021 that the relevant Section 111 form had been completed and the required mitigation payments paid in full. Given this delay it seems to me that, even had the proposal been acceptable to the Council in all other respects, the application would have been refused for these reasons and the appeal would have been unavoidable.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for costs is refused.

S Harley

INSPECTOR