
Costs Decision

Hearing Held on 7 September 2021

Site visit made on 8 September 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Costs application in relation to Appeal Ref: APP/V1260/W/21/3268890 55 Somerford Road, Somerford, Christchurch BH23 3PL

- 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 Fox Homes Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing and erection of 5 dwelling houses.
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Decision

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

Procedural Matter

2. At the Hearing, the applicant submitted a costs application. I allowed submissions to be made in writing. The Council was given the opportunity to reply in writing. No response was received from the Council. In reaching my decision, I have therefore relied upon the submitted written evidence to the appeal and what I heard at the Hearing.

The submissions for Fox Homes Ltd

3. In summary, the applicant considers the Council have behaved unreasonably both substantively and procedurally. Substantively by refusing planning permission without taking into consideration all relevant material considerations, failing to produce evidence to substantiate its reasons for refusal, not assessing the impact of the proposals and objecting to elements of a scheme previously found acceptable by an Inspector in respect of the access, trees and living conditions. Procedurally, the applicant considers the Council failed to agree matters set out in the Statement of Common Ground (SoCG) and to respond to requests from the applicant for additional information.

Reasons

4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. An application for an award of costs may be made on procedural or substantive grounds.

Procedural Grounds

5. The PPG sets out that the local planning authority is at risk of costs on procedural grounds if it does not cooperate with the other party, delays in providing information or other failure to adhere to deadlines and not agreeing a SoCG in a timely manner or agreeing to factual matters.
6. A signed SoCG was submitted on 9 August 2021. An updated version was requested to include the Council's suggested conditions, which had already been submitted, indicating whether agreed or not by the appellant, and details of drawings. A final signed version of this was provided by the Council on the day of the hearing. Although submitted late, the substantive information had been provided and agreed in the initial SoCG. The absence of a signed version of the updated SoCG does not mean the Council failed to agree matters. It does not therefore amount to unreasonable behaviour.
7. The applicant submitted a planning obligation to secure financial contributions to mitigate the effects of the proposal on protected habitats sites. At the Hearing it became apparent that the amount of the financial contribution was incorrect. The applicant has indicated that advice was sought from the Council as to what that figure should have been but no response was received. A UU was nevertheless produced and would have had to be in any event. Furthermore, the applicant was able to update the UU with a revised figure after the Hearing.
8. Whilst this may have been frustrating for the applicant, I have not been provided with any information to substantiate how any of these procedural matters have either inconvenienced the applicant or caused them to incur additional costs. Consequently, I do not find that the Council has behaved unreasonably on procedural grounds.

Substantive Grounds

9. The PPG advises that the local planning authority is at risk of costs on substantive grounds if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fails to produce evidence to substantiate each reason for refusal on appeal; and makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In addition, if it persists in objecting to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
10. I turn first to matters of highway safety. The Council considered the access was substandard in that it could not provide unrestricted visibility to the right hand side for vehicles emerging onto Somerford Road. This was the key point of dispute between the parties.
11. The applicant considers the Council made an inaccurate assessment of the effect of the use of the access on highway safety, rigidly applying guidelines whilst not taking into account actual safety implications, accident data or highway safety issues.
12. The Council provided a detailed statement in relation to highways matters. I agree that the Council did adhere to the guidelines in both the Manual for Streets and its Parking Standards Supplementary Planning Document.

However, it set out its reasons for this and concluded that harm to highway safety would occur. I acknowledge that the Council did not specifically consider accident data. This does not mean that the Council did not consider highway safety. It will be seen from my decision that in the circumstances of the appeal site and the nature of traffic along this road, I have agreed with the Council. It therefore follows that I do not find the Council's behaviour unreasonable.

13. A previous appeal¹ on the site did not raise highway concerns. The applicant contends the Council did not give either this decision or the previous highway authority who advised on the planning application sufficient weight in the appeal that is the subject of this costs application.
14. The Council acknowledged that within the previous scheme, highway safety concerns were not raised. However, this was for a materially different scheme in that it was served by an additional access onto the highway. Notwithstanding the previous highway authority's lack of objection to the scheme, in these circumstances, it was not unreasonable for the Council to consider these matters afresh.
15. Furthermore, the Inspector for the earlier appeal did not specifically consider any highway matters as it was not raised as a main issue and the scheme was dismissed for other reasons. This does not confirm that the previous Inspector found the access onto Somerford Road to be acceptable. It follows therefore that I do not find the Council has objected to a scheme previously found acceptable in highway terms.
16. The Council's reason for refusal set out that the proposed parking spaces, widening of the existing driveway and positioning of Unit 1 would encroach into the root protection area (RPA) of protected trees and that the additional parking and built form closer to these trees would give rise to pressure to fell or severely prune the trees.
17. Whilst reference is made to the access being widened in the previous scheme, the submitted details of that scheme refer to widening of the access onto Stroud Park Avenue and the drawing refers to the existing access onto Somerford Road as being retained and the removal of one tree, T11. The appeal scheme set out details of widening the Somerford Road access and the removal of a different protected tree, T10. In this regard, the schemes were materially different. The previous Inspector had not confirmed these works were acceptable or could be conditioned.
18. In these circumstances, it was appropriate for the Council to consider the impact on trees in the way it did. The applicant provided limited details of these works. It was therefore appropriate for the Council to refuse the scheme on this basis. I have agreed with the Council on this point.
19. It follows therefore that whilst the previous Inspector agreed to the use of conditions to secure issues of the layout and the driveway, this does not make it acceptable for the scheme before me where there are significant differences, notably around the widening of the Somerford Road access. The Council was not therefore unreasonable in considering these details at the application stage.
20. There are some similarities between the previous scheme and the appeal before me in respect of the relationship of the buildings and the protected trees

¹ APP/E1210/W/19/3227280

at the front of the site. I find that the Council has been inconsistent with the findings of the previous Inspector with regard to the harms arising from this including the incursion into the RPA and pressure to fell the trees. This amounts to unreasonable behaviour by the Council.

21. The effect of a proposed development on living conditions is a matter of planning judgement. The Council made an assessment of the impacts of the proposal and clearly set out its reasons. Whilst I have only partially agreed with the Council on these points this does not mean the Council has behaved unreasonably.
22. I am satisfied that the Council acted reasonably on substantive grounds in its assessment as to why the scheme would not be acceptable in respect of highway matters and living conditions. I also find it has substantiated its reason for refusal in respect of the impact on protect trees from the access widening. However, I have found that it has been inconsistent with the findings of a previous Inspector with regards to other impacts on protected trees as set out above. Consequently, I find that the applicant has incurred unnecessary or wasted expense in the appeal process as a result of the Council's actions.
23. Whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position, extra costs were incurred in preparing evidence to defend those aspects of the appeal and an award in these specific respects is appropriate.

Conclusion

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

25. 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 Fox Homes Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting part of the second reason for refusal.
26. 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.

Rachael Pipkin

INSPECTOR