
Costs Decision

Site visit made on 16 November 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2021

Costs application in relation to Appeal Ref: APP/V1260/W/21/3278438 47 Longfleet Road, Poole BH15 2HW

- 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 PNM Construction Limited for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use and extension of the property to form a large 9 bed HMO (sui generis).
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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 (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.
3. The application is based on the Council's failure to determine the application within the statutory period, and its inability to provide assurance that a decision would be made within a reasonable timescale. As a result, the applicant felt compelled to pursue an appeal, which proved to be unnecessary, as the Council subsequently approved an almost identical application, and later confirmed that it would have approved the appeal proposal subject to a legal agreement and conditions.
4. The PPG says that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation, and that in an appeal against non-determination, it should explain its reasons for not reaching a decision. In this case the applicant sought guidance from the Council about the likely timescale for a decision on 13 June 2021, shortly before the statutory period expired. The Council explained that staff shortages were preventing a timely determination, but was not able to provide a clear indication of when a decision would be made. The Council's evidence indicates that the case was not assigned to a new Officer until 14 September 2021, some 3 months later.
5. The Council contends that the applicant was aware of the reasons for the delay, and chose to incur costs in resorting to an appeal. However, it was the Council's inability to provide a definite timescale for determination that placed the applicant in the position of considering an alternative means of resolution.

In the circumstances, the applicant's decision to resort to an appeal was not unreasonable.

6. The PPG says that, in an appeal against non-determination, the local planning authority should explain why permission would not have been granted, had the application been determined within the relevant period. In this case, the Council's statement identifies that, subject to a financial contribution towards mitigating measures for the impact of the development on European Sites, permission would have been granted. Other than securing the contribution, therefore, there were no substantive reasons to justify delaying the determination. The appeal could have been avoided altogether if there had been better communication with the applicant, which provided a realistic prospect that a favourable decision was likely within a reasonable timescale of securing the mitigation.
7. Shortly after the appeal was lodged, an almost identical application was submitted to the Council¹ on 9 July 2021. A Section 111 Undertaking was completed in August 2021 to secure mitigation for the European Sites, and permission was granted on 1 September 2021.
8. The PPG states that, if a local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn. Whilst the appeal was not withdrawn, the approval of the subsequent application demonstrated that the failure to determine the first one had delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. This is another scenario in which the PPG indicates that a local planning authority is at risk of an award of costs.
9. I therefore find that the Council's failure to determine the application, and its lack of effective communication with the applicant regarding the likely outcome and timescale for a decision, put the applicant to the expense of preparing and lodging an appeal. Its subsequent approval of an almost identical application demonstrated that the original proposal was acceptable, so the appeal should not have been necessary. This amounts to unreasonable behaviour on the Council's part, which has led to unnecessary expense being incurred by the applicant.
10. There are, however, some extenuating circumstances that mean a full award is not justified. Firstly, at the time that the applicant lodged the appeal, no means of securing mitigation for the European Sites had been provided, despite the applicant's statement of case indicating that it was aware of the need and justification. The Council was not, therefore, in a position to approve the application at that time. Whilst a Section 111 Undertaking was completed in respect of the subsequently approved application, no mitigation was secured under the appeal proposal, which led me to dismiss the appeal. Consequently, the applicant was not put to unnecessary expense in covering this issue in its appeal submission.
11. Secondly, once the Council had approved the subsequent application, the appeal was, effectively, redundant. As planning permission existed for a

¹ LPA Reference: APP/21/01059/F

virtually identical proposal, there was no need for the applicant to pursue the appeal any further. Consequently, other than in respect of the associated application for costs, any expense relating to the appeal after 1 September 2021 was not a necessary consequence of the Council's unreasonable behaviour.

12. 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

13. 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 PNM Construction Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred prior to 1 September 2021, and not including any expense related to the impact of the development on European Sites; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. 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.

Nick Davies

INSPECTOR