
Costs Decision

Site visit made on 7 December 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2021

Costs application in relation to Appeal Ref: APP/V1260/D/21/3276504 Meriden, Merley Park Road, Ashington, Dorset BH21 3DD

- 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 Paul Warwick for a full award of costs against Bournemouth, Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission for a loft conversion to create additional accommodation and the replacement of the existing garden studio.
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Decision

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

Reasons

2. 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.
3. The applicant contends that the Council has acted unreasonably in respect of the substance of the case but also in that it failed to consider the planning application in a timely and professional manner, and the decision making process was flawed.
4. PPG gives examples where local planning authorities will be at risk of an award being made against them. These include the following:
 - Failure to produce evidence to substantiate each reason for refusal on appeal.
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The Council did not determine the planning application within the eight week time-limit. However, it did ultimately make a decision, albeit significantly in excess of the target period. The Council generally points to a high workload and lack of staff resources as an explanation for the delay, but these are challenges that face many local planning authorities. Little substantive evidence has been provided to show that in relation to this case the circumstances were

exceptional. Furthermore, the evidence before me indicates that, notwithstanding attempts on behalf of the applicant to communicate with the Council, limited explanation was provided to the applicant to account for the delay. On the face of it, this amounts to unreasonable behaviour. In this respect my approach accords with the finding of the Inspector in the costs decision which has been highlighted¹. This is further reinforced by the advice in the PPG² whereby 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.

6. Nevertheless, the PPG goes on to refer to appeals against non-determination. The appeal in this case was not against non-determination and it is not shown that had the Council made a timelier decision, the outcome would have been different. Therefore, although unreasonable behaviour in this respect is shown, it did not of itself, have the effect of incurring unnecessary expense in the appeal process.
7. The applicant expresses doubt as to whether a planning officer visited the site prior to making the decision and therefore, questions whether the Council properly assessed the application. However, the Council has confirmed that a site visit was undertaken from outside of the site. I observed that the property could be seen from the lane to the south. Hence, this does not amount to unreasonable behaviour as described in the PPG.
8. Nevertheless, of greater concern is the absence of clear reasoning in the planning assessment section of the version of the Planning Officer report³ that appeared on the Council's web-site. Although the Council acknowledges there was a technical error, the report published lacked any explanation as to how the recommendation and refusal reasons contained within it were arrived at. Effectively, the entirety of the Council's position, as communicated to the applicant, was provided by the refusal reasons on the decision notice. Two refusal reasons are cited. On the face of it, the first reason refers to the impact on the Green Belt, but the matter is obscured by references to development plan policies that do not directly mention the Green Belt and the omission of policies that do. In the absence of a fuller explanation, it appears that either a design objection is also raised or has been confused with Green Belt policy.
9. The second refusal reason makes no reference to development plan policies or national policy. It is not made clear whether it is a continuation of Green Belt concerns or a separate in principle objection. Neither is it made clear which aspect of the proposal it relates to. Hence, the assertion that the proposal was tantamount to the erection of a new dwelling was vague, generalised and in the absence of any supporting evidence, inaccurate. The result was a somewhat confusing picture as to the precise nature of the harm found by the Council, and on what basis it was founded.
10. Subsequently, a more complete planning officer report was submitted by the Council as part of the appeal process. Nevertheless, this fails to fully surmount the concerns I have outlined. Firstly, the consideration of disproportionality mistakenly refers to a doubling in the footprint of the dwelling, which it appears the Council has confused with floorspace. There is little other quantitative

¹ Reference APP/V1260/W/20/3262202

² Paragraph 048 Reference ID:16-048-20140306

³ Appendix A, Appellant's Costs Application

comparison of the proposed size of the dwelling with the original dwelling, for example in terms of height or volume. Neither is there any explanation, reference to local policy or guidance as to the benchmark the Council considers to be disproportionate.

11. In addition, there are references to the design being very different to the existing dwelling and being prominent and dominant, rather than clearly assessing the resultant size of the proposed dwelling. As there is no separate heading in the report referring to the design merits of the proposal, it does seem that issues of design merit and impact on the green belt have been conflated. Hence, even the more complete version of the planning officer report has confused reasoning which contains vague, and some inaccurate assertions.
12. Furthermore, the Council explicitly states that the garden studio would be considered acceptable providing that it is not used as a separate unit of accommodation and that this could be secured by a condition. This directly contradicts the inclusion of refusal reason 2 on the decision notice. By their own omission, this was a planning ground capable of being dealt with by a condition.
13. Therefore, in combination, these factors do amount to unreasonable behaviour as described in the PPG. Moreover, it will be seen from my decision that, based on its planning merits, I found no conflict with the development plan or national policy in relation to the Green Belt or matters of design. Therefore, on the balance of probability, had the Council acted reasonably, the appeal could have been avoided altogether.
14. On that basis and taking account of the delay involved in making the decision, it is understandable why the applicant lost credibility in the Council and felt that an appeal was an appropriate course of action that required a qualified agent to prepare their case. Accordingly, I find that the Council's behaviour was unreasonable. Furthermore, there is a direct causal link from the behaviour that resulted in unnecessary expense in making the appeal.

Conclusion

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

Costs Order

16. 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 Mr Paul Warwick, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. 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.

Helen O'Connor

Inspector