



Costs Decision

Site visit made on 15 November 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2021

Costs application in relation to Appeal Ref: APP/V1260/W/21/3277704 22 Haven Road, Poole BH13 7LP

- 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 Simon Moxey (Moxey Associates Ltd) for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission for development of rear extension at ground and first floors including mixed use of B1 Office and D2 Leisure. Roof terrace to rear over extension with glazed access doors and enlarged windows overlooking.
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Decision

1. The application for an 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process); or substantive (relating to the issues arising from the merits of the appeal). In this case, the application claims unreasonable behaviour in both procedural and substantive terms.
3. Much of the applicant's submission is focussed on frustrations experienced during the Council's handling of the planning application, including contentions that the Council misunderstood the proposed development; that there was inconsistent advice from the Conservation Officer; and that the applicant was not given the opportunity to address concerns and misunderstandings before a decision was made. The PPG advice is clear, however, that costs cannot be claimed for the period during the determination of the planning application. Nevertheless, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
4. The application alleges that the Council's approach to assessing the planning application has resulted in unsubstantiated reasons for refusal that are inconsistent with subsequent planning decisions.
5. The PPG indicates that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on

appeal. In this case, the Council provided an appeal statement which, together with the original officer report, provided a comprehensive rationale for the decision in relation to the first reason for refusal. This reason was supported by expert advice from the Council's Conservation Officer, and referred to relevant development plan policies. Whilst I came to a different view on the impact of the development on the character and appearance of the Conservation Area, this was, to some extent, a subjective judgement. I find that the Council discharged the requirement to produce evidence to substantiate its reason for refusal on this ground.

6. The second reason for refusal, relating to car-parking, was supported by expert advice received from the Highway Authority, based on the required car-parking standards set out in a recently adopted Supplementary Planning Document. It was not, therefore, inherently unreasonable at the time of the decision. Following submission of the appeal, the Highway Authority withdrew its objection, in the light of advice it had provided on subsequent applications. The PPG advises that local planning authorities are at risk of an award of costs if they do not review their case promptly following the lodging of an appeal against refusal of planning permission. In this case, the Council did review its case promptly, and advised that it would no longer contest the second reason for refusal, thus avoiding any further, unnecessary expense on the part of the appellant on this issue. Consequently, the decision of the Council not to defend its second reason for refusal did not amount to unreasonable behaviour.
7. Following the refusal of the planning application, and prior to my determination of the appeal, planning permissions were granted for a similar development on the appeal site, and for a two-storey extension on the adjacent site to the east. The PPG advises that local planning authorities are at risk of an award of costs for not determining similar cases in a consistent manner. In particular, if the 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.
8. In this case, although I concluded in my appeal decision that the subsequent permission would be fundamentally similar and constituted a fallback position, it was not identical. In particular, the revised scheme had a lower section of roof at the rear, which gave a greater degree of visual separation from the frontage development. This was an issue that the Council's Conservation Officer considered to be important to preserving the character of the Conservation Area. Whilst I did not find this to be the case, the Council's conclusions were not irrational. The two schemes were materially different, and it was not unreasonable for the Council to have concluded that one preserved the character and appearance of the Conservation Area and the other did not. The Council did not, therefore, behave unreasonably in approving the revised application whilst maintaining its objection to the appeal scheme.
9. The planning permission on the site to the east was granted after the appeal scheme had been refused. Whilst it permitted a two-storey extension covering the full width of the site, it differed in many respects from the appeal scheme. It did not extend as far back, and the approved plans allowed for a lower portion of roof at the rear, to provide a visual break from the frontage development. Consequently, the proposal was not so directly comparable to the appeal scheme that the Council's decision to approve it was plainly

inconsistent. The Council did not, therefore, behave unreasonably in approving this development whilst defending its decision to refuse the appeal scheme.

10. The PPG advises that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. In this case, I find that the Council provided cogent evidence in support of one of its reasons for refusal, and promptly withdrew its second reason when circumstances changed. Subsequent decisions that it made were not wholly inconsistent with refusal of the appeal scheme. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR