
Costs Decision

Site visit made on 24 January 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2022

Costs application in relation to Appeal Ref: APP/V1260/D/21/3286975 10 Portman Crescent, Bournemouth BH5 2ER

- 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 & Mrs F Key for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission for alterations and additions to the existing dwelling including extensions and remodelling the facade.
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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.
3. The application for an award of costs in this instance is based almost entirely on the behaviour of the Council during the planning application process. Much of the applicant's submission is focussed on frustrations experienced in communicating with Officers, and delays in the Council's handling of the planning application. 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 applicant contends that the Council's lengthy consideration of the application has delayed a scheme that should have been approved subject to planning conditions. The PPG indicates that local planning authorities will be at risk of an award of costs being made against them, if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. In my decision on the appeal, I concluded that the proposals were in conflict with development plan policies and the aim of the National Planning Policy Framework to achieve well-designed places. It therefore follows that I cannot agree that the Council prevented development that should have been permitted.

5. Nevertheless, the applicant contends that the lack of communication, and delay in dealing with the application warrants sanction. In support of this view, my attention is drawn to a costs decision¹ where an Inspector made a full award of costs in circumstances that the applicants consider to be comparable. However, that decision related to a case where the Council failed to determine the application. The PPG states that in an appeal against non-determination the Council should explain why planning permission would not have been granted had the application been determined within the relevant period. The Council failed to do that. Had they done so, the applicant may not have chosen to appeal. Unnecessary costs were therefore incurred in pursuing the appeal.
6. In this case, however, the application was determined, so the applicants knew the reasons for refusal, and were able to make a considered decision on the merits of pursuing an appeal. Consequently, whilst the Council's delay in dealing with the application was regrettable, it did not result in any unnecessary expense during the appeal process. The cited decision is not, therefore, comparable to the current case, and therefore carries little weight in my decision.
7. The applicant also contends that there was no evidence to support the Council's refusal. The PPG states 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. As this appeal was dealt with under the Householder Appeals Service, the Council did not have the opportunity to submit an appeal statement. Its case was therefore limited to its reasons for refusal and the Delegated Report that was produced when determining the application.
8. The Delegated Report clearly, and succinctly, set out the rationale behind the Council's decision, and highlighted the elements of the scheme that were considered to be in breach of development plan policies. Consequently, the issues that the applicants needed to address in their Grounds of Appeal were apparent. In my decision on the appeal, I concluded that the proposal would harm the character and appearance of the area. In view of this conclusion, it follows that I am satisfied that the Council produced sufficient evidence to substantiate its reason for refusal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR

¹ Appeal Ref: APP/V1260/W/20/3262202