
Costs Decision

Site visit made on 30 May 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Costs application in relation to Appeal Ref: APP/V1260/X/21/3285738 Land at 62 Cranbrook Road, Poole, BH12 3BT

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Simon Collison for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The application is in connection with an appeal against the refusal of a certificate of lawful use or development (LDC).
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Decision

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

Reasons

2. The costs application and arguments advanced on behalf of the applicant were set out in detail in written submissions. As such, I need not repeat them here. The Council has not responded to the application.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG lists examples of behaviour whereby a procedural or substantive award of costs may be justified. However, the list of examples should not be regarded as exhaustive.
4. The evidence submitted in support of the LDC application and the subsequent appeal included signed statements from the tenants and the owner. They described the manner of occupation of the annexe building and its continuous duration for more than 4 years prior to the application. A signed and dated tenancy agreement was also submitted. Although the expiry date was wrong the hand-written date of signature was not. Taken together the evidence was precise and unambiguous overall in demonstrating a continuous use for more than 4 years.
5. The Council report which summarised the assessment of the appellant's evidence did not dispute that the annexe had been occupied as described by the appellant, and accepted the use was not incidental to the main house. Nor did the report dispute the length of time it has been so used. Instead it relied on the fact that the appellant referred to the building as an "annexe", that

¹ Paragraph 030 ref 16-030-20140306

metered water and electricity services were taken from the main house, and that no Council tax had been paid for the annexe. For reasons set out in the appeal Decision I found none of these factors contradicted the appellant's case.

6. That aside, the Council's report makes clear that the overall judgment of the appellant's case was that it had "not been demonstrated beyond all reasonable doubt". However, that is the standard of proof required for criminal cases and was the wrong test to apply. The relevant test, established by the Court in *Thrasyvoulou*², is the "balance of probabilities" – whether something is more likely than not.
7. To conclude, the failure to exercise sufficient care in making a decision on the application, and followed through into the appeal, based on a flawed approach in considering and weighing the submitted evidence, amounts to unreasonable behaviour by the Council, which has resulted in unnecessary and wasted expense for the appellants in pursuing the appeal.

Costs Order

8. 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 the Bournemouth Christchurch and Poole Council shall pay to Simon Collison 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.
9. The applicant is now invited to submit to the 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.

Thomas Shields

INSPECTOR

² *Thrasyvoulou v SSE* [1984] JPL 732;