
Costs Decision

Site visit made on 8 November 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/V1260/W/22/3295070

1 High Street Christchurch BH23 1AE

- 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 appeal is made by Mr C Boulton of Axis 51 Developments for a full award of costs against BCP Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for a proposed development described as erect a block of 8no. flats, a commercial unit and integral cycle store; and a detached block of 3no. terraced houses with integral car ports, with associated car parking and vehicular access off Sopers Lane.
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Decision

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

Reasons

2. The Planning Practice Guidance (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 applicant asserts that the Council prevented development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant's claim is structured according to the reasons for refusal.

Reasons 1 and 2

4. The applicant claims that vague, generalised or inaccurate assertions were made about the proposal's impact, which were unsupported by any objective analysis, and that issues could otherwise have been addressed by condition.
5. Reasons for refusal 1 and 2 identify less than substantial harm to the Christchurch Central Conservation Area (the Conservation Area), and an adverse impact on visual amenity respectively. Specific objections to the position, layout, detailing, materials and soft landscaping of the development are listed. These were subject of amendments during the course of determination.
6. The Council's assessment involved comparison of a previously approved scheme (the previous scheme) with the proposed development, and

identification of differences between. Paragraph 135 of the National Planning Policy Framework was advanced in justification for this approach. However, as set out in my main decision, paragraph 195 is irrelevant given that the previous scheme was not subject of amendment.

7. Notwithstanding the existence of the approved scheme as fallback, the appeal scheme also required assessment relative to the site itself and its surrounding context. This is indeed essential in order to establish whether a development would, in its own right, preserve or enhance the character or appearance of a conservation area. In the absence of such an assessment, it remains the case that the Council has failed to provide any clear explanation of why it considers that the proposed development would give rise to less than substantial harm to the character and appearance of the Conservation Area, and harm to visual amenity. Perceived dilution of a scheme which exists only on paper is not on its own a valid reason.
8. Though the Council's concerns in relation to roofing materials were valid when set in context, this is a matter that could have been addressed by condition given that the scheme would not have been significantly altered by use of a different product. In view of the above, and having found the scheme to be acceptable, reasons for refusal 1 and 2 were unreasonable.

Reason 3

9. The third reason for refusal, relating to highways safety, was withdrawn by the Council following submission of amended plans with the appeal. It was not therefore subject of further dispute. Insofar as the Council's objection related to parking within part of the site annotated as 'parking spaces' on the plans, the appellant states that the plans were erroneous. The applicant nonetheless claims that the issue could have been addressed by condition.
10. Parking within the location in question could cause risks to pedestrian safety, and though somewhat impractical in the absence of any proper means of access, would not be impossible for a very compact vehicle or motorcycle. Notably, removal of scope for such access has been addressed in the amended plans by the proposed addition of a bollard and planting. Though the Highways Authority acknowledged the possibility that the annotation was a 'carry over', and the spaces themselves were not drawn, the appellant left the annotation in place on amended plans submitted whilst the application was being assessed. That being so, it was not wholly unreasonable for the Council to presume that parking of some type was in fact intended. Proceeding on that basis, the imposition of a condition prohibiting such parking would itself have been unreasonable insofar as it would have represented a significant change to scheme. Reason for refusal 3 was not therefore unreasonable.

Reason 4

11. By identifying provision of unacceptable living conditions, the applicant claims that the Council failed to determine similar applications in a consistent manner.
12. The proposed development was of similar form and layout to that previously approved, and the separation distance between the 2 residential buildings much the same. Whilst differences in the proposed accommodation and window placement nonetheless provided some scope for differences in the Council's assessment, the latter was lacking in detailed comparative analysis, including

in relation to context. The extent to which differences between the schemes were meaningful was not therefore properly established.

13. My own assessment established the inconsequential nature of most of these differences. My decision was however based on the amended plans submitted with the appeal, which crucially included the addition of rooflights above the main living spaces of the 3 terraced dwellings. Their addition was a response to the Council's objection to the omission of windows from the rear elevation which were a feature of the previous scheme. Notwithstanding the fact that only one of those windows would actually have lit a main living space, it remains the case that no additional source of light was provided to the main living spaces in the scheme upon which the Council's decision was based. That being so, reason for refusal 4 was not wholly unreasonable.

Reasons 5 and 6

14. Reasons for refusal 5 and 6 related to the failure to secure contributions towards habitats sites mitigation and affordable housing. The applicant asserts that each could have been addressed before the application was determined had the opportunity been provided. There is however no certainty that this would have been the case, particularly given the fact that the application was made on the flawed basis of marginal viability. Moreover, the matter was not then resolved prior to the appeal being lodged and was then only resolved at a very late stage in the process. Refusal of the application in the absence of any secured undertakings to pay contributions was clearly not unreasonable, and given the requirement to provide such undertakings, it follows that all costs related to addressing the matter cannot be considered unnecessary or wasted.

Conclusion

15. In view of my findings above, the applicant's overall claim that planning permission should have been granted fails. I have nonetheless found that the Council acted unreasonably in refusing permission for reasons 1 and 2, and consequently, all costs incurred by the applicant in addressing these matters at appeal was unnecessary. I therefore conclude that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has been demonstrated, and that a partial 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 the BCP Council shall pay to Mr C Boulton of Axis 51 Developments the costs of the appeal proceedings described in the heading of this decision limited to costs incurred in addressing reasons for refusal 1 and 2; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. Mr C Boulton of Axis 51 Developments is now invited to submit to BCP 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.

Benjamin Webb

INSPECTOR