
Costs Decisions

Site visit made on 31 January 2023

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

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Appeal A: APP/V1260/W/22/3302066

Southbourne Crossroad Car Park, Southbourne Coast Road Bournemouth BH6 3NH

- 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 Vivir Estates Ltd 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 construction of 4 new blocks of apartments with associated undercroft carparking.
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Appeal B: APP/V1260/W/22/3310674

Southbourne Crossroad Car Park, Southbourne Coast Road Bournemouth BH6 3NH

- 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 Vivir Estates Ltd for a full award of costs against BCP Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for a proposed development described as construction of 4 blocks of apartment with associated undercroft carparking.
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Decisions

Appeal A

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

Appeal B

2. The application for an award of costs is refused.

Reasons

3. 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.

Appeal A

4. The applicant's claim relates to the 3 reasons for refusal of planning permission which were not otherwise capable of being addressed by the submission of planning obligations. The following Grounds are cited:

- (a) making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis;
 - (b) failure to produce evidence to substantiate each reason for refusal at appeal; and
 - (c) preventing or delaying development which should clearly be permitted.
5. Insofar as the Council's first reason for refusal related to loss of parking space, this contradicted an earlier resolution by its own Cabinet that the car park was surplus to requirement and suitable for sale. The Council's abrupt change in stance was also starkly at odds with its subsequent formal engagement with the applicant to produce a scheme of development for the site. It furthermore lacked any clear basis in evidence relating to change in levels of use, or which demonstrated that unacceptable harm would arise.
 6. Members are not bound to follow the recommendations of their officers, and in simple point of fact, conflict would arise with saved Policy 8.22 of the Bournemouth District Wide Local Plan 2002 due to loss of parking space. Nonetheless, given both the above considerations, the applicant could not have reasonably expected that the Council would refuse planning permission on such grounds. Saved Policy 8.22 was itself otherwise identified as out of date by officers due to its inconsistency with the National Planning Policy Framework (the Framework). The Council's refusal was thus clearly unreasonable, and the costs incurred by the applicant in addressing the matter at appeal were unnecessary.
 7. The Council's second reason for refusing planning permission, which was on grounds of its impact on its surroundings/local character, has not been clearly substantiated at appeal. Though the Council's appeal statement summarises the views of the Committee in relation to the matter, there is no clear correlation between this summary and the author's assessment of the site and its setting. In the absence of any grounding in analysis, the Committee's views read as a series of baseless assertions, which my own assessment shows hold no merit. The Council's reason for refusing the application on grounds of its impact on the surroundings/local character was again clearly unreasonable, and the costs incurred in addressing it at appeal were unnecessary.
 8. The Council's third reason for refusing the application, which was on grounds of its impact on neighbour amenity, was at least partly based on evidence. This consisted of the scheme's failure in some places to comply with Council guidelines relating to separation distances, and in professional assessments which established that a minor/moderate adverse effect would arise in relation to daylight to certain adjacent windows. In this regard reasonable scope existed for the Committee to attach a different weight to such harm than had officers. This is notwithstanding the fact that none of the identified harm was of significant nature, that the Framework advocates a flexible approach within such contexts, and that careful consideration was clearly given to the relationship between proposed and existing built forms during the design process. Despite my own finding that no unacceptable harm would arise to neighbour amenity, the Council's reason for refusing the application on that basis cannot therefore be considered wholly unreasonable.
 9. Given my findings in relation to the Council's third reason for refusal, I cannot conclude that the Council's refusal of the application was itself unreasonable.

10. For the reasons set out above I conclude that on Grounds (a) and (b) unreasonable behaviour resulting in unnecessary expense as described in the PPG has been demonstrated in relation to the Council's first and second reasons for refusal of the application subject of Appeal A.

Appeal B

11. The application has been made on the basis of the Council's failure to determine the application within the required timeframe, thus obliging the applicant to lodge an unnecessary appeal in order to receive a decision.
12. The Council has provided a number of reasons why it was not possible to adhere to the deadline, including workload. The parties further dispute the extent of communication. Ultimately no extension of time was agreed. The Council's failure to determine the application within time was therefore unreasonable, and more so given that it had recently refused the largely identical scheme subject of Appeal A.
13. Given the above it must have been apparent to the applicant that the scheme subject of Appeal B would most likely be refused in due course. At appeal the Council has indeed identified the same reasons for refusal as were given in relation to the application subject of Appeal A. It thus appears likely that an appeal would have been lodged either way.
14. Here the applicant's assertion that the appeal was unnecessary is again based on the view that planning permission should have been granted. However, though I have established above that the application would ultimately have been refused, it remains the case that no decision was ever issued. Moreover, my findings in relation to the third reason for refusal of Appeal A above are also relevant to Appeal B, notwithstanding the minor differences between the schemes.
15. I therefore conclude that unreasonable behaviour resulting in unnecessary expense as described in the PPG has not been demonstrated in relation to Appeal B.

Conclusion

16. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary expense as described in the PPG has been partially demonstrated in relation to Appeal A, but not in relation to Appeal B.

Costs Order (Appeal A)

17. 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 BCP Council shall pay to Vivir Estates Ltd the costs of the appeal proceedings described in the heading of this decision limited to costs incurred in addressing the Council's first and second reasons for refusal of planning permission, and for preparing a costs application in relation to the same; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. Vivir Estates Ltd 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