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## Costs Decision

Site visit made on 7 February 2023

**by A J Sutton BA Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 March 2023**

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### **Costs application in relation to Appeal Ref: APP/V1260/W/22/3302169 Wessex House, Fir Vale Road, Bournemouth BH1 2JW**

- 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 Coastline Homes Bournemouth for a full award of costs against Bournemouth Christchurch and Poole Council.
  - The appeal was against the refusal of planning permission for change of use from hostel to HMO.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process. Examples of unreasonable behaviour include failure to adhere to deadlines and preventing or delaying development which should be clearly permitted.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The applicant states that the rationale for the costs application is that the Council was not in a position to issue a decision notice, as an appeal for non-determination was lodged on the 20 May 2022, and the Council was notified of this appeal. The applicant is also seeking costs against the Council as its decision target date for the application was 22 November 2021, but no decision was issued until 9 June 2022. The appellant contends that no explanation for this delay has ever been received.
5. They go on to state that the original application was appealed for non-determination, and this was allocated an appeal reference.<sup>1</sup> While the appeal

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<sup>1</sup> Ref: APP/V1260/W/22/3299363

- was waiting to be started, and despite being told about the appeal submission, the Council issued its decision notice refusing planning permission.
6. The applicant subsequently requested that the non-determination appeal was withdrawn and then appealed the Council's decision. To this effect the applicant submitted the appeal against the decision (Reference as above). They also notified the Planning Inspectorate that the first appeal was no longer required, and therefore that appeal case was closed.
  7. In respect to its decision making, the Council states that the application lacked any form of supporting information or justifications for the change of use. It also asserts that it emailed the applicant's agent in early November 2021 requesting the additional information and providing comments on the matter that was at issue. It was also suggested at this stage an extension be agreed and that this should be 4 weeks after the submission date of any further information.
  8. It is the Council's opinion, that the application at this time mutually stalled pending the information requested. It considers this not unreasonable as it leans towards attempting to accommodate the applicant and to avoid over-onerous demands. It states that no additional supporting information was offered, and it was made aware of an appeal being register for non-determination.
  9. The evidence submitted in the appeal shows that the applicant did submit some additional information to the Council on the 20 November 2021. Even taking account of the suggested 4 weeks after this submission date, the Council still did not issue its decision after that period. It seems from the evidence before me that, while it may well have been trying to accommodate the applicant, the matter that prompted the Council to make a decision on this proposal was the appeal against the failure of the Council to determine the application. This was a considerable time after the 4 week period following the submission of the additional information and no compelling evidence has been presented to explain this delay. In this regard I find that the behaviour of the Council was unreasonable as it failed to adhere to deadlines without clear reason.
  10. However, although the appellant submitted a non-determination appeal, the address on the appeal form differed from that on the original application form, and that appeal was not properly made. Therefore, that appeal was not validated at the time that the Council issued its decision notice in respect to this proposal. As Article 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 was not activated during the validation process of that appeal, and the appellant requested that the appeal was changed to be an appeal against a refusal to grant planning permission, the Council had the jurisdiction to make its decision.
  11. The Council, in its decision notice, substantiated its reasons for refusing planning permission, with reference to development plan policies and the National Planning Policy Framework. I agree with all its reasons for refusal and have dismissed the appeal on those grounds. The Council therefore did not prevent or delay development which should have been clearly permitted.
  12. Although I find the Council's behaviour has been unreasonable in failing to meet deadlines, this behaviour did not lead to the applicant incurring unnecessary or wasted expense in the appeal process for the reasons outlined

above. It has therefore not been clearly demonstrated in this case that the unreasonable behaviour on the part of the Council has resulted in unnecessary or wasted expense.

**Conclusion**

13. Having considered all submitted evidence and for the reasons outlined above, an award of costs is not justified in this case.

*A J Sutton*

INSPECTOR