



Costs Decision

Site visit made on 21 March 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Costs application in relation to Appeal Ref: APP/V1260/W/22/3301678 26 Chewton Farm Road and 2 Avenue Road, Walkford, Christchurch BH23 5QN

- 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 Amirez Ltd for a full award of costs against BCP Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing dwellings and outbuildings and the erection of 8 dwellings and a detached bungalow (9 dwellings in total) with associated access and parking.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may 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.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal.
4. The applicant is seeking a full award of costs on procedural grounds on the basis it considers that the local planning authority acted unreasonably by delaying the application, failing to provide an explanation for the delay and failing to provide any communication with the applicant during the application process. The applicant contends that these actions have resulted in the applicant having to pursue an unnecessary appeal.
5. The Guidance confirms that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
6. The Guidance advises that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the appellant a proper explanation. Moreover, in any appeal against non-determination, the

local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why planning permission would not have been granted had the application been determined within the relevant period.

7. The Guidance then goes on to say that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. This decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
8. The information before me¹ is that the planning application was lodged on 22 December 2021, was validated by the Council on 4 or 5 January 2022, and had an 8-week determination date of 1 March 2022. The non-determination appeal was validated on 2 August 2022.
9. During that period, the applicant states that, apart from notification of a further change of case officer from a manager, no communication was received from the various planning officers allocated to the application, despite emails from the applicant seeking updates, and the applicant's submission of additional supporting information and an amended site plan and tree report in response to consultee comments posted online by the Council.
10. The Council states that negotiations did take place, prior to the submission of a revised scheme. This has been refuted by the applicant, and I have not been provided with any cogent evidence from the Council that such engagement with the applicant did take place. Moreover, there is no evidence before me of any formal agreement of extensions of time for the determination of the planning application between the Council and the applicant, and the Council has not explained why a decision was not made within the relevant time limit.
11. I appreciate the applicant's frustration in respect of the Council's handling of the planning application and dissatisfaction with the communication process between the planning officers and the applicant. However, notwithstanding the above, I have noted that the applicant did not seek pre-application advice from the Council, as advocated in the *National Planning Policy Framework 2021*. Also, the applicant lodged the appeal in accordance with established procedures in respect of non-determination appeals.
12. The Council's appeal statement confirms the reasons why the application would have been refused, with reference to the relevant development plan policies. Moreover, my appeal decision, which accompanies this costs decision, explains why I have dismissed the appeal. As such, the delay in determination has not resulted in an appeal which could have been avoided altogether.

Conclusion

13. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

¹ Emails dated 7 March, 11 March, 28 March, 12 April, 17 May, 24 May, 25 May between the applicant and the local planning authority and paragraphs 1.2 and 1.3 of the Council's appeal statement.

S Leonard

INSPECTOR