
Costs Decision

Hearing Held on 28 February 2023

Site visit made on 28 February 2023

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Costs application in relation to Appeal Ref: APP/V1260/W/22/3310870 1-3 Watkin Road, Bournemouth, BH5 1HP

- 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 Axis 51 Developments for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The hearing was in connection with an appeal a failure to give notice within the prescribed period of a decision on an application for outline planning permission for development described as "outline planning application for the demolition of existing buildings and the erection of new development of up to 36 dwellings".
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Decision

1. The application for costs is allowed in part, in accordance with the terms set out below.

The submissions for Axis 51 Developments

2. The applicants claim that the Council did not constructively respond to correspondence regarding their planning application, which necessitated submission of an appeal against non-determination. They were provided with a draft Statement of Common Ground on 10 November 2022 and did not respond until 6 January 2023, with the deadline for submission on the 9 January, despite the applicants chasing them throughout that time. The Council also failed to respond to the applicants' efforts to agree the unilateral undertaking.
3. The applicants submitted amended plans during the application to assist consultees, but the Council refused to accept them. They did not upload consultee comments to their website and did not respond to requests for information during the application.
4. The applicants contend that the Council failed to understand the nature of the application, with matters reserved for later consideration. The putative reasons for refusal addressed detailed design matters and the suggested conditions were for a full planning permission rather than an outline permission. The reasons for refusal are vague, generalised, address matters which were reserved and are unsupported by evidence. The Council failed to review the evidence promptly on receipt of the non-determination appeal, resulting in a protracted exercise in preparing the statement of common ground. The applicants sought intervention from senior officers at the authority but received no response. They contend that excessive time was spent on explanations

during both the application and the appeal and on trying to agree a statement of common ground.

The response by the Council

5. The Council responds that there was ongoing communication between themselves and the applicants during the application process. The Council provided regular updates on the application progress, consultee responses and the issues arising from them. The delay in determining the application arose in part from the lack of existing floor plans which were required to carry out CIL calculations, and these were not provided for some time.
6. The Council refused to accept amended plans in line with its policy not to do so once an application is validated. It also advised that a proposed amended plan submitted on the 28 September 2022 did not contain sufficient information to allow the Council to determine the application.
7. The applicants lodged the appeal against non-determination before the district valuer's response was provided. The appeal was not validated by the Inspectorate for around a month after submission, and the case officer sent legal instructions 2 days after it was allocated to them.
8. The applicants did not make a pre-application enquiry to the Council regarding the scheme, which would have informed the development process. The National Planning Policy Framework encourages pre-application engagement, which is also encouraged at a local level. Doing so could have allowed issues with the proposal, including those raised by internal consultees, to be identified. In the knowledge that the Council would not have supported the proposal the applicants could have avoided the costs of the application.
9. The Council sought a different format for the statement of common ground. That proposed by the applicants is that suggested for a public inquiry, and the format for a hearing is typically much simpler and likely could have been agreed.

Reasons

10. National Planning Practice Guidance advises that costs may be awarded in an appeal where a party has behaved unreasonably, and that behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. In an appeal against non-determination the local planning authority may be at risk of an award of costs if the Inspector determines that there were no substantive reasons to justify delaying determination of the application, and where better communication with the applicants would have enabled the appeal to be avoided altogether.
11. I have found that the appeal proposal would not be acceptable for the reasons set out in my decision. Accordingly, I do not consider that the appeal could have been avoided, as I agree with the Council that outline planning permission should not be granted for it. I also recognise that the delay in determining the application arose in part from the need for a valuation exercise that could not be begun until existing floor plans were provided, and which was not completed until after the appeal was lodged.
12. Nevertheless, the failure to agree a statement of common ground resulted in considerable expenditure of time on the applicants' part. A draft statement was

provided early in the appeal process, and while the format may have been that used for a public inquiry, the Council had sufficient time to respond. Discussions on the statement continued until 14 February, where the Inspectorate's deadline for submission of a completed and agreed statement of common ground was 9 January. On the 14 February, considering the lack of resolution, I advised the parties that the statement was not essential and sought clarification on 3 points ahead of the Hearing to save further time for preparation for the Hearing itself.

13. Furthermore, the Council stated that it would have refused planning permission in part due to a lack of outdoor amenity space for future occupiers. However, both the number and nature of the units would be determined at reserved matters stage, as well as the layout of the development. I do not therefore consider that this matter should have been put forward as a reason for refusal.
14. I have also found that the question of harm to protected trees around the site could have been resolved at reserved matters stage. The Council's validation requirements for an outline planning application do not require submission of a tree survey or similar documents. However, the Landscape and Arboricultural consultee raised concerns regarding nearby protected trees, which from the evidence before me were highlighted to the applicants during the application. On balance, while this could have been resolved at reserved matters stage, this would have been contrary to the consultee's advice. I therefore do not consider that the Council acted unreasonably in pursuing this as a possible reason for refusal.
15. Overall, therefore, I find that the Council acted unreasonably in their approach to the statement of common ground, and in pursuing the perceived shortfall in outdoor amenity space as a possible reason for refusal.

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 Bournemouth Christchurch and Poole Council shall pay to Axis 51 Developments the costs of the appeal proceedings incurred in responding to the external amenity space issue, and in the preparation of the statement of common ground.
17. The applicants are now invited to submit to the 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. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Chalk

INSPECTOR