
Costs Decision

Site visit made on 17 November 2023

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Costs application in relation to Appeal Ref: APP/V1260/W/23/3320130 84 Kings Avenue, Christchurch BH23 1NB

- 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 Mr Sayer for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the refusal of planning permission to sever plot - erect new dwelling, garages and alterations/additions to the existing dwelling.
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Decision

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

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 considers that the Council acted unreasonably due to the length of time taken to consider the application involving neglect, poor performance and misleading behaviour.
4. In response, the Council states that the original emails advising that the principle of development was acceptable represented the officer view only and do not represent an indication that the recommendation would be accepted by an authorising officer. The change of opinion by the subsequent Case Officer is recognised but this was due to the original Case Officer not addressing the issue of the Sequential Test. The Council further state that the applicant would have been aware of the need for a Sequential Test due to the site's location within Flood Zone 2 and a letter sent during the validation process. As it was apparent from the communication with the subsequent Case Officer that the application was unlikely to be supported, it was inevitable that the applicant would need to pursue the proposal via the submission of an appeal.
5. The Council further state that with regard to the legal costs for the preparation of the Unilateral Undertaking, these were required in order to avoid a further reason for refusal. The costs incurred in amending plans were as a result of inconsistencies between plans and to overcome an objection from the Highway Authority. Bank fees for severing the plot ahead of determination of the application were at the applicant's risk and with regard to costs for a planning

consultant, most of the correspondence was with the applicant direct with the appeal submitted by the applicant rather than via a consultant.

6. In response to this, the applicant points out that the Council acknowledges a change of opinion during the processing of the application that is more than unfortunate and admits liability.
7. Although the original Case Officer advised that he considered that the principle of development was acceptable, this was only his informal opinion, and this was not binding upon the Council. Whilst this change of position, and the time taken to determine the application is no doubt disappointing and frustrating for the applicant, I have found that the Council were justified in raising concerns regarding the location of the site within a flood zone and the need for a Sequential Test. If the applicant was unhappy with the time taken to determine the planning application, he could have exercised his right to submit an appeal against non-determination.
8. Given that I have found in favour of the Council with regard to the location of the site within a flood zone and harm to the character and appearance of the area, the Council were justified in its approach. The appeal provided an opportunity for the applicant to test the position and explain its case. The costs incurred with the preparation of the Unilateral Undertaking and amended plans were necessary to avoid a further reason for refusal. Bank fees to sever the land ahead of the grant of planning permission were done so at the applicant's risk and I have limited evidence of additional costs from involvement of a planning consultant.
9. In light of the above, I do not find that the Council acted unreasonably due to the length of time taken to consider the application or in their behaviour during the course of the application that led to unnecessary or unreasonable costs for the applicant.
10. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
11. The application for an award of costs must therefore fail.

C Rose

INSPECTOR