
Costs Decision

Site visit made on 5 December 2023

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Costs application in relation to Appeal Ref: APP/V1260/W/23/3322216 St Swithuns House, 21 Christchurch Road, Bournemouth BH1 3NS

- 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 Westbourne Holdings Ltd for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The appeal was against the grant of planning permission subject to conditions for extensions and alterations involving replacement of conservatories, installation of first floor terraces to North, East and West elevations, alterations to fenestration including addition of roof lights and erection of bin and cycle stores.
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Decision

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

Preliminary Matter

2. The application for an award of costs from the applicant also refers to unreasonable behaviour with regard to the inclusion of condition 9 on the planning permission. However, it is clear from the applicant's appeal evidence in relation to the main appeal that it relates to condition numbers 6 and 7 only. As a result, this costs decision can only relate to the imposition of condition numbers 6 and 7 and I have dealt with this costs application on this basis.

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.
4. The applicant considers that the Council acted unreasonably by failing to consider the proposal on its merits, through the imposition of conditions that did not relate to the proposal being applied for, that failed to satisfy the six tests stated in the PPG and through the absence of any valid arguments to impose the conditions.
5. In response, the Council disputes that it has acted unreasonably. The Council states that it is a logical deduction that the application was linked to the Prior Approval application on the site. This is on the basis that the Prior Approval process does not allow physical operational development. Furthermore, it states that it was relevant to condition details of the Electric Vehicle Charging Points and Refuse Management Plan as changes to the car parking layout,

provision of Electric Vehicle Charging Points and the bin store were detailed on the proposed plans accompanying the planning application.

6. In response to this, the applicant states that there is no reference to the application being linked to the Prior Approval, that the Council had a duty to consider the proposal on its merits, and that the Council referred to plans that are not relevant.
7. The PPG advises behaviour that may give rise to a substantive award of costs includes the imposition of a condition that is not necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions. I have found in the main appeal decision that condition number 6 was not relevant to the development permitted. As a result, this condition does not meet the tests in paragraph 56 of the Framework.
8. It is understandable that the Council reached a different view in relation to condition number 6 given the similarity between the plans forming part of the planning application and Prior Approval and the close timing of the submissions. Moreover, it is understandable in light of the inclusion of plans with the planning application referencing the addition of Electric Vehicle Charging Points and as the Prior Approval could not include physical operational development. However, as the planning application is a stand-alone consent that can be implemented independently of the Prior Approval, given that the planning application was granted in advance of the Prior Approval, and the development the subject of the planning application did not generate a demand for parking, the imposition of condition 6 nonetheless did not relate to the development being permitted and as a result its imposition was unreasonable.
9. With regard to the removal of condition 7, the description of the proposal on the application form includes the 'erection of a cycle and bin stores' with the Proposed Site Plan¹ and Proposed Elevations² detailing the position and design of the bin store. As a result, the bin store clearly formed part of the planning application. In light of this, and with reference on the Proposed Site Plan to 'Tracking for private refuse collection 6.6m long vehicle', it was reasonable in light of the inability to collect refuse from the highway to condition the submission of a Refuse Management Plan. Furthermore, the Council provided evidence to justify the imposition of the condition. As a result, condition number 7 therefore meets the tests for conditions set out in paragraph 56 of the Framework and its imposition was not unreasonable.
10. In light of the above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the imposition of condition number 6 and that a partial award of costs is justified.

Costs Order

11. 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 Westbourne Holdings

¹ Drawing number 00 85_p0 011d

² Drawing number 00 85_p0 016b

Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to condition number 6, such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Bournemouth Christchurch and Poole 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.

C Rose

INSPECTOR