



Costs Decision

Site visit made on 27 February 2024

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Costs application in relation to Appeal Ref: APP/V1260/W/23/3328484 227 Bournemouth Road, Poole BH14 9HU

- 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 R La Bouchardiere of 227 Bournemouth Road Ltd for a full award of costs against BCP Council.
 - The appeal was against the refusal of planning permission to erect extensions including a new roof, and convert the resultant building from a dwelling (Use Class C3) to 10 bedroom HMO (Sui Generis).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that awards may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The Guidance makes it clear that costs cannot be claimed for the period during the determination of the planning application, although behaviour of the parties at this time can be taken into account.
4. The application for an award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The appellant is applying for full costs due to delays caused by the Council in finalising the draft legal agreement, and that an appeal decision made on an identical planning application was ignored. In addition, the original case officer was in support of the scheme.
5. My decision explains that I have found substantive reasons for dismissing the appeal. The Council provided a brief statement of case, relying upon this and the officer report to provide an explanation of why the original application was refused. These reasons were clear, precise, and based upon national and local policy.

6. During the consideration of the original application the case officer left the employ of the Council and there were also resourcing issues within the Council's legal team, circumstances which resulted in delays. The Guidance advises that refusing to provide reasonably requested information and a more helpful approach is behaviour that may give rise to an award of costs. For whatever reason the Council's legal team did not engage with the appellant, such a stance would have been frustrating. Nevertheless, the appellant would have been aware from the Inspector's decision upon appeal ref: APP/V1260/W/23/3316796 that a finalised and approved legal agreement was required. The appeal before me was supported with a draft legal agreement. Without a finalised agreement the scheme would harm the integrity of internationally important habitat sites, and the appellant was aware this was the case. Irrespective of the absence of engagement, the decision to appeal in such circumstances would have been one for the appellant to make.
7. With regard to the impact of the proposal upon the living conditions of nearby residents, the Council explained that with the change in case officer there was a change in recommendation. The officer report provides details of the concerns, and again such a change in stance would have been frustrating for the appellant, particularly given the previous case officer's support for the scheme. Moreover, the above referenced appeal decision was made on an identical case and within that decision the Inspector made it clear that the scheme did not result in noise or light conflicts. This decision was issued a few days before the Council refused the original application for the current appeal, and it was remiss of the Council not to have regard to the previous Inspector's decision. Refusing the scheme for a matter which the previous Inspector found to be acceptable as well as failing to determine similar cases in a consistent manner is unreasonable behaviour on the part of the Council.
8. The consideration of planning applications and appeals involves matters of judgement that are at times finely balanced. In this case the Council substantiated the harm resulting from the proposal with regard to matters of habitat sites, but have persisted in objecting to an element of the scheme which was previously indicated by an Inspector to be acceptable. In doing so similar cases have not been determined in a consistent manner.
9. Consequently, I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense as described in the Guidance has been demonstrated. A partial award of costs is justified as a result of the Council refusing the original application for concerns regarding the living conditions of nearby residents.

Costs Order

10. 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 BCP Council shall pay to Mr R La Bouchardiere of 227 Bournemouth Road Ltd, the costs of the appeal proceedings described in the heading of this decision with regard to the matter of the impact of the proposal upon the living conditions of nearby residents; such costs to be assessed in the Senior Courts Office if not agreed.

11. The appellant is now invited to submit to BCP 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.

J J Evans

INSPECTOR