



Costs Decisions

Site visit made on 13 June 2024

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2024

Costs application in relation to Appeal A Ref: APP/V1260/W/24/3339647 4 Burton Road, POOLE, BH13 6DU

- 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 C Wilson for a full award of costs against Bournemouth Christchurch and Poole 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 Partial demolition of the garage, erect new side elevation walling, sever land and erect 2 detached houses with associated car parking (revised scheme).

Costs application in relation to Appeal B Ref: APP/V1260/W/24/3339623 4 Burton Road, POOLE, BH13 6DU

- 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 C Wilson for a full award of costs against Bournemouth Christchurch and Poole 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 outline planning permission for Partial demolition of a garage, rebuild the side elevation of the garage. Sever land, extend driveway and erect a detached dwelling with off road car parking.

Decision Appeal A

1. The application for a full award of costs is refused.

Decision Appeal B

2. The application for a full award of costs is refused.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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. The PPG sets out details of circumstances in which an award of costs might be warranted.
4. The PPG states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. 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 permission would not have been granted had the application been determined within the relevant period.

5. The PPG indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however, 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 applicant's claims for costs are on the basis that the Council did not determine either application within a reasonable timescale and did not communicate to a satisfactory degree with the applicant to give reasons for the delays.
7. The planning application which relates to Appeal A was registered on the 10 November 2023 with a target date for determination of 5 January 2024. On 6 January 2024 an extension of time until the 31 January 2024 was agreed by the parties. As the applicant had not received any communication from the Council despite leaving several voicemails requesting a call back, the applicant chased the Council by email on 1 February 2024. With the exception of the applicant being advised that the Case Officer had received the voicemails but had not had chance to respond on 30 January, no further information was received by the applicant until 22 February 2024. At this time the applicant was advised that the application was likely to be refused but that the report had not been written and it was not possible for a timescale for determination to be given until the Case Officer returned from jury service. The applicant then submitted an appeal dated 28 February 2024.
8. The planning application which corresponds with Appeal B was registered on 20 July 2023 with a target date for determination by 14 September 2023. On 5 October the Case Officer advised that they had been unwell and that they would be recommending the application for refusal. The Case Officer also explained that they had a large workload and may transfer the application to another officer to determine. On 18 October an extension of time until 30 November was agreed by the parties. On 16 November the Council advised that the application was being assessed but offered no further information. Following further correspondence, the deadline was once again extended on the 6 January to the 31 January. The applicant chased this on the 1 February. An appeal against non-determination dated 27 February 2024 was then submitted. On 3 June 2024 the Council, seemingly with no knowledge of the appeal which had been lodged, issued a decision refusing the application.
9. The evidence before me demonstrates that communication between the parties relied upon the applicant chasing the Council. The evidence is also clear that promises of updates were made by the Council but were not received and that communication from the applicant often went unanswered for extended periods of time.
10. The applicant agreed extensions of time in relation to both appeals which should have allowed for the extra time required to cover, for example, the Christmas period. Despite the agreement of a number of extensions of time the Council repeatedly failed to meet their deadlines.
11. I understand that the Council was, and continues to be, under pressure due to a high volume of applications. I also accept that sickness, annual leave and other commitments such as jury duty can delay the ability of Case Officers to determine applications and respond to queries. However, the length of time taken by the Council in respect of these applications was unreasonable even

under the circumstances outlined above. No satisfactory, proper explanations as to why the agreed deadlines were repeatedly not met have been given.

12. For the reasons set out above, I consider that the Council has indeed behaved unreasonably. However, the PPG is clear that in order for an award of costs to be warranted the unreasonable behaviour must have resulted in unnecessary or wasted expense in the appeal process.
13. In respect of Appeal A, the Council submitted a statement at appeal stage which set out, as required by the PPG, why they would have refused the application had they determined it. For Appeal B, the Council's erroneously issued decision notice also sets out their thoughts on the application. Despite the delays and the poor communication throughout the application process, the Council do appear to have indicated, in relation to both appeals, that the applications were likely to be refused due to concerns around the sub-division of the plot.
14. It is clear from the submitted evidence that both applications would have been refused and thus, though they could have been lodged earlier, the appeals could not have been avoided in their entirety. The expense involved, therefore, in putting together the appeals would have been incurred even had the Council determined the applications on time. As such, I do not consider that unnecessary or wasted expense has been incurred by the applicant so as to warrant an award of costs.

Conclusion

15. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, the award for costs in relation to both appeals is not justified.

L J O'Brien

INSPECTOR