



Costs Decision

Site visit made on 24 September 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Costs application in relation to Appeal Ref: APP/V1260/W/24/3344024 8 Fir Vale Road, Bournemouth BH1 2JG

- 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 E La Bouchardiere (8 FVR Limited) 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 change of use from a former language school (Use Class F1(a)) to a 12-bed HMO (Use Class Sui Generis).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the 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 application for costs is based on the Council's failure to determine the planning application within the statutory period, or to explain any reasons for the delay. It therefore largely relates to the behaviour of the Council during the consideration of the planning application, rather than during the appeal process. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application, but that all parties are expected to behave reasonably throughout the planning process. Actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
4. The PPG says that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably failing to determine planning applications. One of the examples it gives of unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations.
5. The PPG also advises that, 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 prescribed timescale. If an appeal in such cases is allowed, the local planning authority may be at risk

- of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination, and better communication with the applicant would have enabled the appeal to be avoided altogether.
6. In response to the applicant's claims, the Council explains that the delay in determining the application was due to the submission of an appeal relating to a previous and similar proposal on the same site. The Council considered that the outcome of that appeal would be a material consideration for the determination of the application, which, to my mind, is not an unreasonable position to take. It would, however, have been helpful if the Council had communicated this stance to the applicant.
 7. The evidence shows that the application was originally validated by the Council on 19 February 2024, with a statutory determination target of 14 April 2024. The appeal against non-determination was lodged on 8 May 2024. Whilst this was 24 days after the target date, the related appeal against the previous refusal was well underway at this point. Consequently, the Council could have expected a decision, which would help inform their determination of the second application, within a short timescale. It was not, therefore, unreasonable for the Council to withhold a decision pending the outcome of the appeal.
 8. In defending the appeal, the Council clearly set out its reasons why permission would not have been granted had the application been determined within the relevant period. I found that the proposal would be harmful to the character and appearance of the Conservation Area. It therefore follows that the Council effectively explained its reasons in this regard. Although I concluded in my decision that the development would provide satisfactory living conditions for future occupants, the Council provided cogent evidence to support its position on this issue.
 9. The Planning Statement that accompanied the planning application acknowledged the need to make a financial contribution to mitigate the impact of the development on the Dorset Heathlands Special Protection Area and Dorset Heaths Special Area of Conservation. However, at the time that the appeal was lodged, no means of securing this contribution had been provided. Nor was it provided during the course of the appeal, resulting in my decision to dismiss. It is therefore clear from the evidence, that the Council was not in a position to approve the application within the statutory determination period, or at the point at which the appeal was lodged. It follows that the Council did not unreasonably prevent or delay development which should clearly have been permitted.
 10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred, and an award of costs is not warranted.

Nick Davies

INSPECTOR