



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: 23 October 2024

Costs application in relation to Appeal Ref: APP/V1260/W/24/3338577 9 Tower Road, Bournemouth BH1 4LA

- 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 Bournemouth Christchurch and Poole Council for a full award of costs against Mr R La Bouchardiere (9 Tower Road Limited).
- The appeal was against the refusal of planning permission for erection of a two storey side extension and conversion of loft to habitable use with 2 x rear dormers to enlarge the existing 7-bed HMO with a manager's office.

Decision

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

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 essentially relies on the fact that the appellant has unreasonably pursued the appeal against a background of numerous applications for similar proposals that have been refused, and where subsequent appeals have been dismissed. In particular, my attention is drawn to two dismissed appeals dated 30 April 2024¹, where it is contended that the proposed division of garden space between the HMO and adjacent bungalow was identical to the proposal before me. Whilst the appeal was submitted before those decisions, the Council maintains that it should have been withdrawn once the outcome was known, as there was little prospect that it would succeed.
4. The PPG advises that the right of appeal should be exercised in a reasonable manner. It goes on to say that an appellant is at risk of an award of costs being made against them if the appeal or ground had no reasonable prospect of succeeding. Examples are given of where this may occur. One of these is where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.
5. The appellant argues that the appeal scheme was materially different to previous proposals, that it is not unreasonable to submit variations to an

¹ Appeal references APP/V1260/W/23/3331172 and APP/V1260/W/23/3331647

approved scheme, and that, in any case, if the Council had considered it to be substantially the same as a previously dismissed scheme, it could have been turned away. Consequently, it is argued that it was not unreasonable to pursue the appeal.

6. There has been a long planning history, with numerous applications and appeals. This has undoubtedly resulted in a significant amount of work for the Council. However, the evidence indicates that the two-storey side extension and loft conversion, which have already been constructed, remain unauthorised. In these circumstances, it is not unreasonable for the appellant to seek a resolution to the breach of planning control through the submission of revised applications. This is, though, subject to the revised proposals having a realistic prospect of overcoming previously identified reasons for refusal or dismissal of appeals.
7. There were two main issues in the appeal. The first of these was whether suitable external amenity space would be provided for occupants of the HMO, and the second was the effect of the development on the external amenity space available to the occupants of 9c Tower Road. With regard to the first issue, the planning history has involved proposals that varied in terms of the number of occupants of the HMO, and the configuration and layout of the proposed outdoor space. The appeal proposal was not identical in these regards to any of the previous schemes, including those that were the subject of the appeal decisions dated 30 April 2024. Therefore, on this issue, it was not unreasonable for the appellant to pursue the appeal, and, in my decision, I concluded that sufficient outdoor space would be provided for occupants of the HMO.
8. However, on the second issue, the outdoor amenity space for occupants of the bungalow proposed under the appeal was almost identical to that proposed under previous applications. In an appeal decision dated 3 October 2022², the Inspector concluded that a garden of very similar dimensions would be *"particularly small and cramped, resulting in poor living conditions for occupiers of the bungalow due to the lack of external private amenity space"*. There is no evidence that circumstances have materially changed in the intervening period. It could be argued that this is no longer a recent appeal decision, and that it would not have been unreasonable to pursue the appeal if this had been the only Inspector's decision relating to this issue.
9. However, a very similar outdoor amenity area for the bungalow was again proposed under the more recent appeal reference APP/V1260/W/23/3331647. In the decision letter dated 30 April 2024 the Inspector concluded that the larger sized garden for the HMO *"would provide inadequate external space for occupiers of the bungalow as it would be unacceptably small and cramped"*. This is undoubtedly a recent appeal decision on the same site, where an Inspector decided that the proposal was unacceptable. No evidence has been provided to show any change in circumstances. My attention was drawn to examples of other permissions where small gardens had been permitted. However, I note that one of these was also drawn to the attention of the Inspector in the recent appeal decision, so cannot be considered new evidence.
10. On receipt of the 30 April 2024 decision, it should have been clear to the appellant that, with two Inspectors concluding the same way on this issue, the

² Appeal reference APP/V1260/W/21/3285388

appeal had no reasonable prospect of succeeding. The evidence indicates that the Council discussed this position with the appellant's agent, but that the appellant chose to pursue the appeal, despite the clear indication of the likely outcome from two Inspector's decisions. As a result, the Council was put to the unnecessary expense of defending the appeal. This amounts to unreasonable behaviour on the part of the appellant.

11. The appeal was already in progress by the time the 30 April 2024 decision was received by the appellant. Consequently, the appellant's actions up until that time were not unreasonable, and a full award of costs is not justified. However, the appellant's failure to recognise that there was little prospect of success following receipt of the decision means that the Council's expense from thereon was unnecessary.
12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has occurred, and a partial award of costs is therefore warranted.

Costs Order

13. 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 Mr R La Bouchardiere (9 Tower Road Limited) shall pay to Bournemouth Christchurch and Poole Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 30 April 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr R La Bouchardiere (9 Tower Road Limited), to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Nick Davies

INSPECTOR