



Costs Decision

Site visit made on 9 April 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Costs application in relation to Appeal A Ref: APP/W1715/W/23/3329598 63 Underwood Road, Bishopstoke, SO50 6FX

- 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 Dr Gary Chaffey for a full award of costs against Eastleigh Borough Council.
 - The appeal was against the refusal of planning permission for First floor extension to 63 Underwood Road and construction of a new two storey end-of-terrace dwelling.
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Costs application in relation to Appeal B Ref: APP/W1715/W/23/3334365 63 Underwood Road, Bishopstoke, EASTLEIGH, SO50 6FX

- 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 Dr Gary Chaffey for a full award of costs against Eastleigh Borough Council.
 - The appeal was against the refusal of planning permission for first floor extension and proposed 5-bedroom, two storey, end-of-terrace dwelling with associated parking provision.
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Decision

1. The applications for an award of costs for both Appeals A and B are refused.

Reasons

2. 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. A Council would be vulnerable to costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. In association with Appeal A, the Applicant alleges that in substantive terms the Council:
 - gave favourable advice during the planning application consideration process and despite the officer's making a careful assessment of the scheme, assessing the ecologist's objection and recommending approval, the proposal was then refused by planning committee. There was no good reason for Committee to act contrary to the officer recommendation, and in placing too much reliance on the ecologist's comments, has resulted in unreasonable behaviour.

- The Committees assertion that the garden space is awkward is not a sufficient reason for refusal. No trees overshadow the site, despite the officer stating this in the report, this objection formed part of the reason for refusal.
4. In association with Appeal B, the Applicant alleges that in substantive terms the Council:
- placed undue weight on the previous planning decision which was refused as a “significant material consideration”, despite the fact that officers recommended it for approval and was overturned by planning committee. Also, subsequent correspondence from the Council explained that it refused the scheme to defend its position at appeal. To maintain this position represents an ‘about turn’ of officers’ professional judgement.
 - placed over reliance on it’s ecologist’s comments by identifying that in the absence of an ecological report it had not been demonstrated that the concerns of the previous refusal had been addressed or overcome. Moreover, the Council’s failure to delay making its decision to await receipt of the Appellant’s promised ecological assessment was unreasonable.
 - The failure to consult Natural England for Scheme B, which presented an improvement from Scheme A, represents biased behaviour.
 - Officers came to a view about the size of the private amenity garden which is inconsistent with the previous views made by officers for Scheme A despite being larger. Also, whilst the Appellant’s Arboricultural Report identifies that the site is not overshadowed by trees, this was ignored by the Council.

Appeal A

Committee not following officer advice

5. A Planning Committee must represent the interests of the whole community and maintain an open mind when considering planning applications. Where members take decisions on planning applications, they must do so in accordance with the development plan unless material considerations indicate otherwise.
6. A Planning Committee is not obliged to accept the recommendation of its officers. Nonetheless, councillors should be ready to explain why they have not accepted an officer’s recommendation. The Committee’s decision, in this case, to not follow officer advice followed discussion and took into account the reported objections to the scheme. This included the comments from the Council’s ecologist. These comments, Government Guidance and the Committee’s considered views provide a reasonable contrary view to the officer report and by extension the Appellant’s evidence.
7. The Committee noted the impact of the scheme on the ancient woodland, the small size of the amenity space and other matters. I understand that this created extensive debate demonstrating careful deliberation before making a decision. Furthermore, the objection of the Council’s ecologist identified in the officer report, has remained a consistent concern throughout the submitted evidence for both schemes A and B. Nonetheless, inconsistency of opinion seems to have appeared between officers who have afforded different weight to

the material considerations. However, it is reasonable for the case officer to come to a view, and for Planning Committee to come to its own, potentially different view.

8. As such, as officer advice was clearly stated as being given 'without prejudice', and contrary to the final outcome of the proposal, this differing of opinion would not amount to unreasonable behaviour.

Garden size and overshadowing

9. The Council found in RfR2 that the garden provision would be out of keeping with the existing pattern of development, would be an awkward shape and be overshadowed by adjacent trees. In my main decision, I have found that the rear and side garden of Scheme A would be narrow with enclosed spaces, creating a poor-quality living environment. I found the garden of Scheme A to be shaded by the proximity of the trees and the proposed dwelling, despite the absence of trees overhanging the site. Therefore, whilst the Appellant's arboricultural report found that the trees would be unlikely to block direct sunlight, I found that the proximity of trees would demonstrably impede daylight levels within the rear garden area. As a result, the Council's views on this matter are not unreasonable.

Appeal B

Weight applied by officers to the previous refusal

10. A planning application must be determined on its own merits. For the Council to refuse the scheme the subject of Appeal B, to defend its position at appeal or to allow the refused scheme to determine how it approached Scheme B would be fundamentally wrong. Nonetheless, the previous refusal would have been a material consideration when assessing scheme B. It would be reasonable for a decision-maker to consider whether the revised scheme has addressed the previous scheme's reasons for refusal. I am therefore content that the refusal of scheme A 'played a part' in the consideration of scheme B, this seems to be nothing more than an appropriate exercise in the comparison between the proposed and refused schemes.
11. As such, it is not readily demonstrated in the officer's report that the Council refused scheme B just to defend its position at appeal. I also do not concur with the Appellant that this decision was tantamount to a pre-determined committee decision.
12. In terms of decision making, the Council demonstrated a consistent response to development on the site in refusing three schemes for similar types of development. However, it is recognised that officer opinion has varied considerably in applying policy, applying different weight to the comments of the Council's ecologist and to the submitted evidence. The advice given informally during site meetings and email exchanges suggest a more favourable approach than that seen in the officer report for scheme B which did not align with the positive officer report for scheme A. It is also perhaps inconsistent of the Council to have determined scheme B by delegated decision, rather than Committee, but this is a decision undertaken by the Council and I have seen no evidence to suggest it breached its schedule of delegation.
13. The officer reports, for scheme A and scheme B make contrary recommendations, despite the second scheme being set further away from the

Site of Importance for Nature Conservation (SINC). However, in my consideration of scheme B I have largely concurred with the Council. Moreover, whilst some inconsistency is evident between the officer reports this has not affected the outcome of decisions made by the Council and as such no material inconsistency in the Council's decisions has been found.

14. I have found that the Council made a fair and objective assessment of scheme B and it has therefore demonstrated that this was determined on its own merits. Furthermore, it is noted that a site visit was not undertaken for scheme B, but I am content that the site had not substantially altered between schemes. Therefore, these actions do not demonstrate unreasonable behaviour.

Submission timing of the Ecological Assessment

15. The Appellant's agent informed the Council on 23 October 2023 that she was attempting to obtain an ecological statement and on the 26 October that she was still trying to obtain one. A further email, on 2 November, was submitted by the agent informing that an ecology statement would only be able to be submitted to the Council in the new year. The case officer then informed the agent on 30 November that the proposal would be refused within its statutory time frame. This email was sent the day the Council made its decision, as a delegated refusal. I note that emails later that day from the agent explained that an ecologist would be visiting the site the following weekend with a report being prepared and submitted the following week. However, it seems that a decision had already been made at that time.
16. Planning authorities are required to make planning decisions within statutory timeframes. The Appellant's agent's timeframe for the submission of the ecology statement would be well past the deadline to make a decision. Furthermore, it is not certain that receipt of such would have resolved the Council's ecological concerns or matters relating to the size and arrangement of the private amenity space, which formed a second reason for refusal. Consequently, the Council's decision to issue a decision within its statutory timeframe was reasonable and there was no clear reason for it to have delayed this.

Natural England

17. The Planning Inspectorate consulted NE as part of the appeal process, for Appeal B. NE responded with concerns relating to the effect of the proposal on the River Itchen Special Area of Conservation (SAC) and questioned whether the proposal would make use of 'P-Credits'. NE had no comments on the effect on the SINC, which is unsurprising as it does not normally comment on the effect of development on local designations, although I understand it has chosen to in some circumstances. Consequently, the absence of the Council's consultation with NE for the second scheme does not demonstrate biased behaviour.

Garden size and the matter of overshadowing

18. The Appellant asserted that the proposed garden of scheme B was larger than shown for scheme A and would not be overshadowed by adjacent trees, as demonstrated by the Appellant's arboricultural report.

19. As stated in my main decision, I found that the garden of scheme B would be of sufficient size and would not be demonstrably in shade due to its increased size. The officer report explains that the garden would be overshadowed by the adjacent trees. It does not refer to the findings of the Appellant's arboricultural report. However, this is not necessary, the officer report demonstrated the key areas of policy conflict and provides clear reasons for this conflict. The matter of overshadowing is partly subjective, depending on the site context and the proposed development. Consequently, the Council's assessment of the extent of shading of the rear garden, and the method of such assessment, does not demonstrate unreasonable behaviour.

Conclusion on both applications for costs

20. I therefore find that unreasonable behaviour associated with appeals A and B, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Ben Plenty

INSPECTOR