
Costs Decision

Site visit made on 27 September 2016

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18th October 2016

Costs application in relation to Appeal Ref: APP/J3720/W/16/3150598 Southfield Farm, Compton Scorpion, Ilmington, Warwickshire CV36 4PJ

- 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 Rob Whorrod for a full award of costs against Stratford on Avon District Council.
 - The appeal was against the refusal of planning permission for the change of use of land to residential, demolition of existing dutch barn and erection of a barn comprising a swim spa, plant room and mezzanine dance studio. The creation of two glazed links between buildings and conversion of an existing barn to comprise a fitness studio with changing area.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. The applicant submits that the Council has acted unreasonably in that it failed to address issues material to the determination of the application submission, which, if dealt with appropriately and comprehensively, could have avoided the need to appeal the decision.
 4. I note the Council's incorrect reference to bullet point 4, paragraph 17 of the National Planning Policy Framework (the Framework). However, the applicant clearly recognises that bullet point 5 in fact refers to intrinsic character and beauty of the countryside. It seems to me that this is a typographical error and does not amount to unreasonable behaviour.
 5. The Council's reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan that, at the time, the proposal would conflict with. These reasons were adequately substantiated by the Council in its Delegated Report, which demonstrates how the development would affect the existing buildings and the character and appearance of the area. Whilst I appreciate that the appellant does not agree with the outcome of the application, the Council were not unreasonable in coming to that decision.
-

6. The delegated report does not provide any explanation as to why the proposed change of use of the land to domestic curtilage was considered any differently to that which was previously approved. Furthermore, the Council's appeal statement offers no further explanation. However, the reasons as to why they object to the current proposal were adequately demonstrated in the Delegated Report, which I have concurred with. Therefore the Council behaved unreasonably by not providing an assessment of the proposal in comparison with the previously approved development. However, as I have found in favour of their reason for refusal for this part of the development, unnecessary expense incurred in the appeal process has not been demonstrated.
7. I have had regard to the applicant's submission that the Council did not consider the boundary wall. However, the delegated report refers to the 'extension of the garden' and the 'proposed works'. Whilst there is no specific mention of the wall, I do not accept that the Council did not consider it. The wall would clearly form part of the domestic curtilage and I do not find that the Council's consideration of this element of the proposal as a whole rather than assess each of its individual components amounts to unreasonable behaviour. Furthermore, I do not find that the Council's failure to consider the extant permission for the equestrian use of the land was unreasonable as the approved use differs significantly from that proposed.
8. I acknowledge that the Council's Conservation Officer's comments were favourable towards the proposal. However, it is not clear to me what the remit of the Conservation Officer is. The Case Officer's assessment of the proposal on the character and appearance of the existing buildings and the area was adequately substantiated. On the face of it, I do not find its conflict with the Conservation Officer's comments to be unreasonable behaviour. However, the conclusion that the proposal would not retain the character of the host dwelling conflicts with the granting of the listed building consent. Section 16(2) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out the local planning authority's duty in the consideration of applications for listed building consent, which is to have 'special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. I do not see how the development could on the one hand preserve the building and its setting, yet on the other, adversely harm its character and appearance. The Council has not provided any explanation for this inconsistency. I find therefore that the inconsistent approach to the consideration of the two applications to be unreasonable behaviour, which has resulted in the applicant incurring unnecessary expense in contesting this reason for refusal.
9. Following the Council's refusal of the planning application, the Stratford on Avon District Core Strategy (CS) 2011-2031 has been adopted. In their appeal submission, the Council confirmed that the policies within the Stratford on Avon Local Plan Review (LP) 1996-2011 no longer carry any weight and set out which policies of the CS were relevant. The Council's appeal statement provided extracts of the relevant policies of the CS. Whilst they did not provide an assessment of the proposal against these policies, it is clear what the reasons for refusal are and how they apply to the relevant policies when the appeal statement is read in conjunction with the Delegated Report. The fact that the LP policies referred to in the Delegated Report no longer carry weight does not result in the assessment of the proposal being no longer applicable. Therefore, I do not find that this amounts to unreasonable behaviour.

Conclusion

10. I therefore find that the Council have acted unreasonably in respect of failing to determine the effect of the development on the character and appearance of the listed buildings and the listed building consent application in a consistent manner, which has resulted in the applicant incurring unnecessary and wasted expense and that a partial award of costs is justified.

Costs Order

11. 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 Stratford on Avon District Council shall pay to Mr Rob Whorrod the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's first reason for refusal.
12. The applicant is now invited to submit to Cherwell District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Alexander Walker

INSPECTOR