
Costs Decision

Site visit made on 20 September 2016

by Elaine Benson BA (Hons) DipTP MRTPI

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

Decision date: 3 November 2016

Costs application in relation to Appeal Ref: APP/W1850/W/16/3150919 The Fodder Store, Boat Lane, Whitbourne, Worcester WR6 5RS

- 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 Clifford Poultney for a full award of costs against the County of Herefordshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for conversion of a cottage annexe to provide one bedroom accommodation without complying with Condition 4 attached to planning permission Ref DCNC2004/2013F dated 29 July 2004.
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Decision

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

Reasons

2. Of relevance to this application for an award of costs the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably with respect to the substance of the matter under appeal, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. As the claim and response are made in writing there is no need to repeat them here.
 3. The applicant claims that Reason for Refusal 1 is imprecise because it does not clearly identify the source of the harm that the Council states would be caused or how this harm would be manifested. I agree that this Reason for Refusal is somewhat vague. However the applicant clearly understood the Council's concerns which can be easily ascertained from the content of the officer report and the previous appeal decision with which the main parties were familiar. The applicant was able to fully address these matters in the appeal submissions. As a consequence I do not consider that unnecessary or wasted expense in the appeal process was incurred.
 4. The Council used the term 'opaque' to describe the film applied to the boundary windows, whereas the applicant prefers the term 'translucent'. I note that the manufacturer describes the various types of film as 'obscure privacy films'. In my view the use of differing language does not go to the heart of this particular appeal. Samples of the film could have been available to the Council when the application was determined and its use had been granted listed building consent a few days earlier. Furthermore, the Council did not object on the basis of light levels within the Fodder Store which could have been different depending on whether opaque or translucent film had been proposed.
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5. The effect of the film was apparent at the appeal site visit, although I understand that it was not in situ at the time of the Council's decision. I concluded that the use of the film has resulted in a loss of any meaningful outlook towards the garden of the Olde Rectory for future residents of the Fodder Store. Therefore to my mind any of the terms used to describe the film could therefore be appropriate. However, as set out in my decision, the building does have other, clear glazed windows which continue to provide an outlook. I therefore agree that the wording of the first Reason for Refusal is imprecise. Nonetheless, I consider that it is sufficiently clear from the evidence read as a whole that the Reason for Refusal refers to the windows to which the film would be applied. Furthermore, the applicant was able to make his case on this basis.
6. The applicant states that Council officers did not visit the site and as a consequence incorrectly led the Council to believe that the only windows in the Fodder Store were those in the gable. Contrary to the applicant's statement, the other windows in the Fodder Store are described in the *Site Description and Proposal* section of the Council's officer report. I am unable to verify with any certainty whether or not a site visit was undertaken as the officer report states that a visit was made on 30 November 2015. I am not convinced by the evidence that there were factual errors which formed the basis of the Council's decision as is claimed.
7. The PPG indicates that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs. As set out in my decision I concluded that the appeal proposal could be allowed, subject to additional conditions. However, the Council's officer report also considers the potential to impose conditions under its *Option 2*. Listed Building Consent had been granted for the application of film to the gable windows on the boundary and the reason for making that application can be traced back to the previous appeal decision. The Council's decision not to impose the suggested condition due to the impact on the living conditions of future occupiers of the Fodder Store is a matter of judgement and not a supportable ground for allowing costs. Although I disagree with the Council in my appeal decision, the reasoning that led to its decision is clear, although it would have been helpful to include a further reference to the other windows for the avoidance of doubt.
8. The applicant claims that the Council failed to determine similar cases in a consistent manner, referring to the planning permission granted for the change of use of the neighbouring Hooch Hall from a holiday cottage to a dwelling. That consent included a condition requiring the installation of internal window shutters to prevent overlooking. The applicant states that no concerns were raised about the effect of the shutters on the future occupiers of Hooch Hall and that there would be more of an outlook from the Fodder Store than at Hooch Hall. Whilst there are similarities between the two proposals, each case should be determined on its own particular circumstances. In these two proposals the relationship between the buildings and those adjacent or nearby and the method of overcoming overlooking concerns were materially different.
9. Turning to whether the Council continued to object to elements of a scheme which an Inspector has previously indicated to be acceptable; the officer report states that the provision of obscure glazing would overcome the overlooking concerns, thereby agreeing with the Inspector. The Council's refusal reason relates to a consequence of that action on the living conditions of future occupiers of the Fodder Store, by reason of a loss of outlook. This matter was

not put to or addressed by the previous Inspector. For the avoidance of doubt, I set out in my decision why the yew trees would not fully address my concerns about overlooking from the first floor bedroom window and I explain why I reached a different conclusion to the previous Inspector.

Conclusion

10. For the reasons set out above I conclude that the Council's behaviour does not give rise to a substantive award of costs and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I have had regard to all other matters raised but none are determinative or cause me to alter my conclusion. An award of costs is unjustified.

Elaine Benson

INSPECTOR