
Costs Decision

Site visit made on 28 November 2016

by Veronica Bond LLB (Hons), Solicitor (non-practising)

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

Decision date: 7th December 2016

**Costs application in relation to Appeal Ref: APP/C3105/D/16/3159523
Orchard Barn, 40 Yew Tree Close, Launton, OX26 5AE**

- 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 Ian Cattle for a full award of costs against Cherwell District Council.
 - The appeal was against the refusal of planning permission for single storey extension to rear, new roof light window, summer house.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 basis for the appellant's costs application is essentially that the Council: made vague assertions unsupported by objective analysis and improperly exercised its development management responsibilities; attached undue weight to the views of the Conservation Officer who did not conduct a site visit; made factual errors in the Officer's Report; dealt with applications inconsistently; and did not positively engage in the application process.
4. As regards the summer house and roof light proposed, the Officer's Report lacks any detailed objective analysis based upon the site context such as to properly identify the nature of its concerns in respect of these aspects. This is particularly so bearing in mind that my site visit identified more prominently located roof lights on nearby converted former farm buildings, and given the domestic paraphernalia already visible within the property's garden. I acknowledge that the Council has since sought to indicate that the summer house and roof light proposed were not its key concerns, but there is nothing in the Officer's Report or decision notice sufficient to indicate that these aspects were considered acceptable.
5. Further, in relation to the impact on nearby heritage assets, the Council identifies the heritage value of the appeal property and refers to its relationship with the Yew Tree Farm listed building. However, the Council's assessment regarding the significance of, and analysis in relation to, other heritage assets cited such as Home Farm House and The Elms are far less clear. I thus do not consider that the Council provided adequate objective analysis in these

- respects and it has failed to properly exercise its development management responsibilities in these regards.
6. As such, representations made by the appellant referring to the impact of the proposed summer house and roof light, and regarding the significance of and impacts upon Home Farm House and The Elms represent wasted expense in the appeal process.
 7. I note comments that there appears to be some disconnect between the perceived harm as detailed in the Officer's Report as compared to in the decision notice. However, reading the Report as a whole in conjunction with the decision notice, it is clear that the Council makes reference to the scale, form, massing, design, appearance and siting of the proposal. The absence of explicit reference to 'siting' and 'appearance' in the decision notice does not confuse the Council's concerns in this context, and given that the decision notice references visual harm in terms of the appearance of the proposal, and issues as to siting connected to the proximity to nearby heritage assets.
 8. Further, it is apparent that the Officer seeks to analyse the proposal by outlining the development proposed and the relationship with Yew Tree Farm, referring to Policy and Guidance aims and identifying the aspects of the development proposed not perceived to comply with those aims by reference to the original form of the building.
 9. I acknowledge that the views of the Conservation Officer were made without the benefit of a site visit and made based upon Google Earth images, which could well be out of date, and on photographs, the nature of which was unspecified in the Officer's report. Nonetheless, it is apparent that the primary basis of the Conservation Officer's objection to the side extension was of any addition to the footprint and simple form of the building. Further, it appears that the Planning Officer did undertake a site visit, which also formed the basis for the Council's assessment. Given also the close proximity of the Yew Tree Farm listed building, it was not unreasonable for the Case Officer to place significant reliance upon the comments of the Conservation Officer in the circumstances.
 10. The appellant indicates apparent inconsistency on the part of the Council in dealing with local applications where the setting of heritage assets was not considered. I do not have full details of those applications referred to in order to form a detailed assessment as to whether the Council has acted inconsistently. In any event, the Council has identified some differences between the impacts of the applications cited, and provides evidence to indicate that in respect of the 2011 application, there was some consideration of the setting of Yew Tree Farm.
 11. The Officer's report refers to the proposed summer house as a 'detached garage'. Although factually incorrect, a previous sentence within the same paragraph and the description of the proposal in the heading to the report identify a summer house. This appears therefore to have been a typographical error and the Council clearly was aware that a summer house was applied for. Errors on the front cover of the Council's costs response similarly reflect typographical errors which have not affected the Council's assessment.
 12. Incorrect dimensions for the extension given in the Officer's Report, although unfortunate, would not, I consider, have altered the Council's assessment of

the proposal, given that these were fairly minor discrepancies and as the Council apparently appeared to object essentially to almost any variation of the building beyond its existing footprint.

13. Incorrect references to national policy would not have altered the overall assessment given the conflict the Council found as regards development plan policy. The reference by the Conservation Officer to there being a wall dividing Yew Tree Farm from the appeal building was clearly a historic reference, rather than a statement ignoring the current presence of the access road.
14. Although I acknowledge that the Council in the Officer's Report refers to matters in respect of which it would have benefitted from further information, these were issues which could have been more appropriately discussed at pre-application stage. Accordingly, I do not consider that the Council behaved unreasonably in failing to seek this further information, particularly given that it had more fundamental concerns with the proposed extension.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. 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 Cherwell District Council shall pay to Mr Ian Cattle, the costs of the appeal proceedings limited to those costs incurred in representations related to the proposed summer house and roof light and regarding the significance of and impacts upon Home Farm House and The Elms; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 3 of this letter.
17. 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.

Veronica Bond

INSPECTOR