
Costs Decision

Hearing held on 29 and 30 November 2016

Site visit made on 29 November 2016

by G D Grindey MSc MRTPI Tech. Cert. Arb

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

Decision date: 06 January 2017

Costs application in relation to Appeal Ref: APP/A4710/W/16/3150217 Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ

- 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 Calderdale Metropolitan Borough Council for a partial award of costs against MAC-RK Engineering.
 - The hearing was in connection with an appeal against the refusal planning permission for the erection of 10 (later amended to 8) Passiv-Haus terraced houses within grounds of listed building. (Lower terrace)
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Costs application in relation to Appeal Ref: APP/A4710/W/16/3150196 Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ

- 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 Calderdale Metropolitan Borough Council for a partial award of costs against MAC-RK Engineering.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 10 Pasiv-Haus terraced houses within grounds of listed building following demolition of unlisted building.
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Costs application in relation to Appeal Ref: APP/A4710/W/16/3150198 Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Calderdale Metropolitan Borough Council for a partial award of costs against MAC-RK Engineering.
 - The hearing was against the refusal of listed building consent for the erection of 10 Pasiv-Haus terraced houses within grounds of listed building following demolition of unlisted building.
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Decision

1. The application is allowed and an award is made.

The submissions for Calderdale Metropolitan Borough Council

2. The Council submits that the drawings caused considerable confusion in establishing what the appeal proposals related to, thereby causing the hearing unnecessarily to run into a second day. The appellant's representatives failed to maintain contact with the Council or give notice to the Council as to

amendments to the proposal that were only brought to the Council's attention on the day of the hearing. The Council had not seen or received the updated tree survey plans, the Impact Assessment or the Method Statement.

The response by MAC-RK Engineering

3. The Inspector made the decision to adjourn the hearing to a second day, as there were still a number of issues to be covered, albeit the appellants were willing to carry on into the evening of the first day. The Council was in possession of all the plans; nothing was new on the day of the hearing. It is not the appellant company's fault that the Environment Agency was not re-consulted in the plans which show the building up of land levels (appeal A).
4. Having (later) reviewed the documents sent to the local planning authority, it is accepted that the later Arboricultural report was not sent as a supporting document to the Council at the time the appeal was made; they were uploaded to the Inspectorate's site as part of the appeal submission however.

Reasons

5. In preparing for the hearing, in the days beforehand, I became aware of a significant number of issues with the plans. It is necessary, in the first instance, for an Inspector to be wholly aware of exactly what the proposal comprises. I was unable to establish this to my satisfaction and, accordingly, arrived at the hearing with a considerable number of questions about the plans. These had to be resolved before I and all parties could move onto the matters in dispute.
6. As an example, my questions sought clarification on: why there were plans with similar details but different numbers (x suffix); orientations described incorrectly, application sites edged red; errors on plans such as the storm-water pond width; sections not agreeing with flank elevations; references to 'playing fields' in sectional drawings when this could not be correct; plans with different details but with the same reference, or the same plans to different scales with different reference numbers. Many of these problems are set out in more detail in my decision document, paragraphs 3 – 12. Each had to be clarified with the appellant company's representatives.
7. I was unsure about the relationship of the appeals B and C proposals and the grade II listed Barn as there were no details of that important juxtaposition and no elevation drawings showing how the two might appear together. Indeed, the Council officers had not realised (until the day of the hearing) the intention is to place the building within 30mm of the stone flank wall and seal the gap with silicone and an aluminium strip at roof level. Mr Xenakis agreed that this was not detailed anywhere on the plans. This is not a trivial matter that can be left until later; I needed to know what the proposal before me entailed before I could begin to discuss the matters in dispute.
8. A further time-consuming problem which only surfaced as a result of my questions was that there are 2 versions of drawing PL09-04x in existence, with different information on them – extremely important information concerning a proposed increase in built-up land volume within flood zone 3 which is only shown on one of them. Because this later one was sent to the Council in July 2015 after they had already consulted the Environment Agency (EA) on the first one and received a reply in June 2015, the EA may not be aware of this

element of the proposals¹. The Council's officers had, understandably, since it carried the same reference number, also not realised the gravity of the change. I needed to spend considerable hearing time assessing this element too.

9. A reason for refusal on appeal A concerned the protected trees around the site. The Council was aware of the first tree survey, carried out in December 2014, which numbered all the trees. They were re-surveyed in April 2016 in connection with the appeal preparations – some subsequently had different numbers. Unfortunately, as the appellant's representatives agree², the later documents were not sent to the Council with notification of the appeal. They were uploaded to the Inspectorate, but there would be no reason for the Council to be aware of them there. This also caused some confusion and a short time was spent clarifying matters at the hearing.
10. Issues of the precise land boundary between Mr and Mrs Luddington's garden and the appeal site also took a lot of time to discuss; a not insignificant area of land is disputed. One glance at Mr Luddington's Land Registry plan makes it clear that there is a conveyancing error somewhere. I accept that land ownership is usually a private matter between the parties. But where, as here, it throws into doubt how, exactly, unit one of appeal A could be constructed; what the finished land levels would be and what private garden space would be available to unit 1, I would have expected this to have been resolved before the matter progressed to appeal. This is not least because it remains unclear what, exactly is being applied for, and where.
11. While Mr Xenakis said that he checked with the appellant company's solicitor that their application red line boundary is correct, the disputed land is somewhat crucial to the extent of the proposals. In my judgement this is a matter that should not have needed hearing time as it had been raised months earlier³ and could have been settled conclusively outside of hearing time. To summarise, an inordinate amount of hearing time was wasted trying to establish exactly what was proposed.
12. It was also imperative that, because matters were so confused, the appellant's representatives should peg out the footprint of the Appeal A proposals on site, so that its position, relative to the site boundaries and the trees, could be established. Thus a long accompanied site inspection, with matters to be discussed on site, was necessary; this had to be carried out in daylight. We had, therefore, to adjourn to the site in early afternoon, with outstanding matters still to discuss but, even then, did not finish on site until dusk was falling at around 16:30.
13. It takes about 40 minutes to journey between Todmorden and the Council's offices in Halifax, with additional time for car-parking and walking back to the office necessary too. I doubt that we could have resumed the hearing back at the Council's venue before 17:30. While the main parties said they would be willing to sit late, in my judgement there was no prospect of finishing within a short time.
14. As the appellants say I did, indeed, take the decision to adjourn; that is a judgement for the Inspector as paragraph 11 of the Town and Country Planning

¹ In any event the consultation pre-dates the catastrophic flooding of Todmorden on Boxing Day 2015

² Email of 4 December 2016

³ Letter of 28 June 2015 from Mr and Mrs Luddington

(Hearings Procedure) (England) Rules 2000 makes clear. I judged it better to re-start at 09:00 the following morning. However, in my view, this adjournment to the second day was only necessary because such a long portion of the first day was wasted in establishing matters that were the responsibility of the appellants to have set out clearly in the first place.

15. I find that the appellant company has behaved unreasonably in these matters (see Planning Practice Guidance ID:16-052-20140306) and their unreasonable behaviour has resulted in unnecessary expense for the Council. Time and effort was expended on the first day to clarify the proposals which should not have had to be pursued.

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 MAC-RK Engineering shall pay to Calderdale Metropolitan Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the second day of the hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to MAC-RK Engineering, 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.

Gyllian D Grindey

Inspector