
Costs Decision

Site visit made on 30 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 20th February 2017

Costs application in relation to Appeal Ref: APP/P0240/W/16/3163393 Builders Yard, Higher Rads End, Eversholt, Bedfordshire MK17 9ED

- 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 A Clarke for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of planning permission for erection of replacement building and change of use of the site from B8 to B1 (offices) without complying with conditions attached to planning permission Ref CB/16/00360/FULL, dated 29 March 2016.
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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 (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. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
 3. Paragraph 49 of the PPG provides a number of examples of the types of behaviour which might give rise to a substantive award of costs against a local planning authority. This application refers to the following of these: not determining similar cases in a consistent manner; failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances, and; imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework).
 4. There appears to be no dispute between the main parties that the permission to which the disputed condition had applied (CB/16/00360/FULL) relates to a building similar in scale to that approved earlier under reference CB/10/02462. Indeed, in paragraph 2.1 of the rebuttal to this application, the Council stresses that the approval had been given to this scheme in part because of its similarity to the earlier approved proposal in terms of general form, scale and massing.
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5. The Council refers to material changes in circumstances between the 2010 permission and the current appeal and, in particular, to the publication of the Framework in 2012 and the cancellation of previous national Planning Policy Guidance. However, the Council has not provided any substantiation over how national policy had changed through the publication of the Framework such that it would have now supported the disputed condition being applied to remove the stable building. I can find no material change in national policy that would support the imposition of this condition.
6. The Council also considers in paragraph 2.4 of the costs rebuttal that the building subject to this appeal was materially different in form and use to that allowed in 2010. This partly contradicts the earlier paragraph that there was similarity in the general form between the two buildings allowed. Furthermore, I am not persuaded by the Council's argument that the difference in uses of the two approved schemes, the first being for a storage use (B8) and the current development for office accommodation (B1), has any material effect upon the openness of the Green Belt, which was the reason for applying the disputed condition to the latter.
7. From the evidence the original stables were on this site when the Council allowed the storage building in 2010. The delegated report for the later replacement stables (CB/12/02849/FULL) refers to the original stables as an 'unattractive building' of only minimal less footprint than those proposed in its place. The storage building was subsequently approved without a condition requiring the demolition of these existing stables.
8. I am consequently of the view that the Council had not determined these similar cases in a consistent manner and had failed to deal with the office proposal in the same way as the earlier one for the storage building, where there had been no material change in circumstances. This demonstrates unreasonable behaviour of a substantive nature as indicated in paragraph 49 of the PPG.
9. I have found in the appeal decision that imposing a condition requiring the removal of the stables was neither necessary to provide car parking for the approved office development or to protect the openness of the Green Belt, was not precise or reasonable in all other respects. The condition therefore did not comply with the required tests in paragraph 206 of the Framework and to apply it demonstrates further unreasonable behaviour of a substantive nature as indicated in paragraph 49 of the PPG.
10. Furthermore, the reason for condition 3 given in the planning permission for CB/16/00360/FULL was in the interests of protecting the openness of the Green Belt and to ensure sufficient parking on the site. The reason for condition 3 did not include the need to safeguard the amenity and privacy of the residents of No 18 Higher Rads End, or indeed any other neighbouring occupiers. Therefore I find unreasonable behaviour in the Council seeking to justify the condition on reasons not previously given for its imposition, relating to the combined effects of the stables and the office building harming the living conditions of the occupants of No 18.

Conclusion

11. I accept the broad account provided in this application of the expenses incurred as a consequence of submitting the appeal and contesting the reasons

requiring condition 3 of planning permission CB/16/00360/FULL. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and conclude that a full award of costs is justified.

Costs Order

12. 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 Central Bedfordshire Council shall pay to Mr A Clarke the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Central Bedfordshire Council, 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.

Jonathan Price

INSPECTOR