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## Costs Decision

Hearing held on 21 March 2017

Site visit made on 22 March 2017

**by Roger Catchpole DipHort BSc(hons) PhD MCIEEM**

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

**Decision date: 04 May 2017**

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### **Costs application in relation to Appeal Ref: APP/W3005/W/16/3165759 Forge Mill, Mill Lane, Bestwood Village, Nottingham, Nottinghamshire NG6 8SW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, 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 Mr Michael Pepper (Baybe.org Ltd) for a partial award of costs against Ashfield District Council.
  - The hearing was in connection with an appeal against the refusal of planning permission and listed building consent for the renovation of a former mill building to create offices, café, restaurant, worship area, factory workshop with recreation areas and a 3 person, manager's apartment.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance 2014 (as amended) (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The application for costs was made by the appellant with reference to a refusal of planning permission for the renovation of a former mill building to create offices, café, restaurant, worship area, factory workshop with recreation areas and a 3 person, manager's apartment. The appellant believes that the Council acted unreasonably because it did not determine a similar case in a consistent manner, provided information that was shown to be manifestly inaccurate and prevented development that should have otherwise been permitted. Taken together these perceived failings risk an award of costs on procedural and substantive grounds.
4. Turning to the first ground, it is clear that elements of the existing scheme had a high degree of similarity to a previously approved scheme (Ref: V/2013/0217 and V/2013/0219). Namely, the external fire escape, disabled access ramp and car park. Even though I found that the proposed scheme would be inappropriate development in the Green Belt, for which no very special

circumstances exist, this was not the conclusion of the Council in relation to the permitted scheme. As such, there was a degree of inconsistency in its decision making given that the only significant difference would be the presence of three heat source pumps and an associated concrete base. As the Council's reasoning in its statement of case shows, it considered all of the features to be harmful to the Green Belt and lacking justification. This clearly goes beyond the Green Belt impacts that would simply arise from the difference between the permitted scheme and proposed scheme. I therefore conclude that the Council acted unreasonably because it failed to determine a similar case in a consistent manner.

5. Turning to the second ground, it is clear that the Council's appeal statement contains information that was shown to be untrue. This is because it was established at the Hearing that the majority of the access ramp on the northern elevation is not within the Green Belt. This is because it overlaps with the footprint of a former stable that was part of the main building. Consequently, the majority of the area that the ramp occupies is excluded because the Green Belt boundary was drawn along the line of the building as it previously existed. I therefore conclude that the Council acted unreasonably because it submitted information that was manifestly inaccurate.
6. Turning to the third ground, I am satisfied that the proposed scheme is fundamentally different to the permitted scheme in terms of the utilisation of the internal space and the extent of the proposed and unlawful works. Furthermore, the fact that the planning committee acted contrary to the advice of its officers does not indicate that the development should have been permitted. This is because any officer recommendation does not preclude elected Members from arriving at a different conclusion. They are only guided rather than directed by officer opinion and act on all the available evidence. As such, I am satisfied that the Council acted reasonably and did not prevent development that should have otherwise been permitted.
7. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process. Where a partial award is sought then unnecessary expense needs to be clearly attributable to a specific aspect of the proceedings.
8. As I found in my appeal decision, the proposal would cause significant harm to both the listed building and the Green Belt and that these harms would not be outweighed by other factors. Consequently, I am satisfied that the Council had legitimate concerns that could not have otherwise been resolved. Irrespective of how the Council determined the previous application, part of the appeal site is clearly within the Green Belt and the appellant was therefore obliged to consider this fact at appeal. Consequently, I am satisfied that the unreasonable behaviour did not lead to any additional costs.
9. As such, the appeal could not have been avoided and no unnecessary or wasted expense was consequently incurred. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

*Roger Catchpole*

INSPECTOR