The Planning Inspectorate

Costs Decision

Site visit made on 18 April 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 5th May 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/16/3165972
Chilvester House, Chilvester Hill, Calne SN11 0LP

- 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 Lily Designs for a full award of costs against Wiltshire Council.
- The appeal was against the refusal of planning permission for the conversion of Coach House into dwelling.

Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can be awarded against a party who has behaved unreasonably and thereby caused the costs applicant to incur unnecessary expense in the appeal process.

3. The applicant's application relates to costs incurred in addressing issues raised by the Council in its Committee report and in the late submission of the Council's statement of case that was felt had been resolved prior to the Council's decision or could have been dealt with by way of appropriate conditions. These aspects relate to both procedural and substantive matters.

4. The PPG provides examples of unreasonable behaviour on the part of local planning authorities. These include procedural timeliness and circumstances where substantive evidence has not been provided or where vague or generalised assertions have been made as to the development's impact. The Local Planning Authority is expected to request additional information if it is lacking and not refuse planning permission on the grounds of insufficient information, without requesting that information.

5. Late submissions of the Council's case occurred. However, this was acknowledged as an error and it was left to my discretion whether or not to accept the late submissions. I concluded that I needed to have all material facts before me to enable me to discharge my statutory duties in relation to heritage matters. I do not believe that the Council can be unduly penalised for a decision that I took to accept late submissions.

6. In coming to its decision, the Council explained the reasons for the proposal being in conflict with Policy H4 of the North Wiltshire Local Plan 2011, concluding that the extent of damage following the fire together with the

continued deterioration of masonry meant that the building would need to be substantially reconstructed. Having regard to the location of the building outside any recognised settlement, such works would be tantamount to the creation of a new dwelling in the open countryside, which would be contrary to local and national planning policies.

7. The applicant submitted a structural survey that sought to demonstrate that the building was capable of conversion without significant rebuilding. Whilst the survey revealed that some of the remaining structure could be repaired, substantial rebuilding and new building elements would also be necessary. Given the balanced nature of the structural survey findings, the Council was entitled to further challenge the report findings by requesting a method statement to demonstrate that the walls which were of a friable material, lacking in damp proofing, open to the elements and leaning could be utilised without recourse to demolition and rebuilding.

8. Given that the structure was also a heritage asset, it was important that a cautious approach was adopted by the Council in order to carry out its statutory duties in relation to the protection of such assets. The applicant declined to submit further information. I have noted that the applicant has now sought agreement on the form and content for such a methodology statement and the Council in turn accepting this as a basis for a planning condition. However, this relates to a more recent and separate planning application.

9. As this aspect of the proposed development was crucial to both the Council's policy seeking to prevent new development in the countryside and to its statutory duties for the protection of heritage assets, I do not consider that the Council `s actions has amounted to unreasonable behaviour.

10. Turning to ecology matters, whilst I have reached a favourable decision based on the findings of a Phase 1 Ecological Survey report, the report appeared to relate to other developments involving a much larger area of land comprising the curtilage of Chilvester House in addition to the conversion of the Coach House and its immediate curtilage. That said, the report recommended that further surveys be undertaken, including of reptiles, bats and amphibians; indeed the same report explained that further surveys were underway and would be provided to the Council. I can appreciate that there was a level of uncertainty and that a precautionary approach was adopted by the Council. In this regard, I do not find that unreasonable behaviour can be levied at the Council.

11. In planning appeals, and other proceedings to which the PPG applies, the parties involved are normally expected to meet their own expenses. Whilst the applicant will, no doubt, have incurred expense in pursuing the appeal, the Council has exercised its duties in a reasonable manner. Whilst I do have some sympathy with the applicant on the basis that there does appear to have been an element of reluctance to fully engage in a *'can do'* manner during the course of the application, it did seek to obtain further information which it felt was crucial to the outcome of the planning application. This does not in itself amount to unreasonable behaviour.

12. Whilst planning conditions can be used to make an otherwise unacceptable development acceptable in planning terms, I do not believe that the Council was wrong in principle to refuse to deal with outstanding matters in this way.

Indeed, the method statement has only recently been submitted to the Council while the ecology report advised that further surveys were underway. The Council understandably expected that such surveys would be submitted.

13. Consequently, the expense that has been incurred by the applicant is not therefore as a direct result of any unreasonable behaviour (either substantive or procedural) by the Council.

14. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. I therefore conclude that an award of costs is not justified.

Gareth W Thomas

INSPECTOR