
Costs Decision

Site visit made on 23 February 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 16 May 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/16/3164330 Besants Garage, Main Road, Christian Malford SN15 4AZ

- 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 N Besant for a partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of workshop building and stables (revised proposal).
-

Decision

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

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.
3. The application is for a partial award of costs as reflected in the second bullet point of the above header. However, in his later submission in response to the Council's costs statement, the applicant refers to seeking a full award of costs. Despite this difference, I have considered the application on its merits in coming to my conclusion.

Reasons

4. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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.
 5. The appellant claims that the Council acted unreasonably in refusing planning permission on the basis that the reasons for doing so were previously deemed as being suitable in relation to a previously submitted scheme (Ref 16/04116/FUL). It is claimed that although that other scheme was refused planning permission, the reasons were not due to the scale, bulk, massing and design of the development or its impact on the setting of the adjacent undesignated heritage asset, No 40 Main Road. The appeal scheme was submitted with the residential element of that previous scheme removed which the appellant understood to be the issue.
 6. It is also highlighted by the applicant that the proposed west elevation would not extend as close to No 40 as the previously approved 2010 scheme, Ref N/10/01423/FUL, and would be lower. However, it was stated in the officer
-

report relating to the appeal scheme that the proposal will add marginally to the building's bulk, albeit that it was also considered that the building would still represent an improvement to the appearance of the site and residential amenity of the adjacent neighbour.

7. It is apparent that the appeal development includes material changes to the previously approved scheme, including a wider span and increased bulk, albeit marginal. Notwithstanding my conclusions on the appeal, it was therefore reasonable for the Planning Committee to make a judgement, different to that of the case officer, that those changes would be sufficient to cause the harm set out in the decision notice. Furthermore, the Planning Committee minutes reflect that consideration was taken of the differences with the approved scheme. Such a judgement was also in line with concerns raised by the Council's Conservation Officer in respect of the impact on the setting of No 40.
8. The previously refused scheme, Ref 16/04116/FUL, is acknowledged by the Council to have been an identical building in physical terms to that relating to the appeal, and I have no substantive evidence to indicate that it was refused for the reasons relating to the appeal development. The previous scheme was refused under delegated powers without going to Planning Committee. It was nevertheless a Council decision, regardless of whether delegated or not. It should therefore have been a significant material consideration in respect of the reasons for refusal, in determining the application the subject of the appeal.
9. It is claimed by the Council that the understanding of the significance of No 40 has increased following initial screening of non-designated heritage assets undertaken in the course of preparing the local Neighbourhood Plan, and that this represented a material change in circumstances. However, I have no substantive evidence to indicate that this was a factor in the Council's decision. There is no reference to a change in circumstances in this respect in the committee minutes or in the Conservation Officer's consultation response.
10. The Planning Committee are entitled to come to a decision on an application, having regard to the relevant policies of the development plan, that is contrary to the recommendation of its officers. This took account of the previously approved scheme. However, no account was taken of the previously refused scheme in respect of it being externally identical and not refused for the reasons relating to the appeal development. Although any planning application should be determined on its own merits, that should have been a significant material consideration. It was not treated as such. The Council has therefore not determined similar cases in a consistent manner.
11. In conclusion, for the above reasons, I find that the Council did behave unreasonably in determining the application and that, therefore, the applicant's costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, a full award of costs is justified as opposed to the partial award originally applied for.

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 Wiltshire Council shall pay to Mr N Besant 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. Mr N Besant is now invited to submit to Wiltshire 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.

Andrew Dawe

INSPECTOR