
Costs Decisions

Site visit made on 9 May 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 9th June 2017

Costs Decisions in relation to;

Appeal A: APP/Z3825/W/16/3166492

Appeal B: APP/Z3825/Y/16/3166325

Appeal C: APP/Z3825/W/16/3166496

Appeal D: APP/Z3825/Y/16/3166494

Springlands Barn, Frylands Lane, Wineham BN5 9BP

- In Appeals A and C these Decisions are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5), and in Appeals B and D 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 appeals were made by Mr Jerry Teague against the decisions of Horsham District Council.
 - The appeals were against the refusal to vary or discharge conditions of planning permission and listed building consent for conversion of barn to single residential dwelling, and the addition of a retaining wall and steps, alterations to driveway, and log store to rear of stables.
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Decision

1. I make a partial award of costs against the Council in the terms set out below.

Procedural Matters

2. Following the issue of my Decisions on 18 May 2017, the Planning Inspectorate's Costs and Decision Team wrote to the Council to say that I was considering whether to make an award of costs against the Council on behalf of the appellant, accompanied by my reasons for considering that course of action. The Council responded in accordance with the required timetable.

Reasons

3. The Planning Practice Guidance 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.
 4. The first part of the points I put to the Council, and which could have resulted in a full award of costs, was that had the Council acted on the appellant's request to reissue the Decisions but with a new timetable, no appeals would have been necessary. On the further information now before me, I accept that some form of appeal may have been lodged, either as a section 79 appeal against the grant of permission subject to conditions to which the appellant objected, or in response to any enforcement action that the Council may subsequently have initiated. The protracted planning history does appear to
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show unwillingness on the part of the appellant to follow due process in constructing in accordance with the plans originally approved or addressing the shortcomings identified by the Council.

5. With regard to the inclusion in the appeal documents of the wrong Decision Notice, regarding Henfield Funeral Services, I accept that this was an error rather than unreasonable behaviour and a costs award on that account is not appropriate.
6. I turn now to the wording and intent of the disputed conditions. I requested copies of the original grant of permission and consent to ensure that there had not been any error in how they had been written in the other documents that had been supplied to me. The wording in condition 5) provides for details to be submitted within a set timetable, although there is some confusion over the wording of the implementation clause and this has been clarified in my Appeal Decisions. There is no unreasonable behaviour in relation to this condition and no award of costs is appropriate here either.
7. However, the wording of condition 4) in each case did not contain provision for submission of details, despite the Council's assertion to the contrary in their Costs response, in the second paragraph of page 2 and the fourth paragraph of page 4. The wording was *'Within 2 months of the date of this permission the rooflights in the southern elevation shall be removed and replaced with steel or case metal framed rooflights within a central mullion, fitted flush with the adjoining roof surface, and shall not project above the plane of the roof, and shall thereafter be retained as such'*.
8. The appellant did state the view that the present rooflights were 'case metal' in that the metal encased the timber frame of the rooflight, and I noted that the rooflights on the west roof-slope that are apparently acceptable to the Council are of an identical construction to those objected to on the south roof-slope.
9. The situation was not satisfactorily clarified in response to my query over the meaning of the terms 'steel or case metal' when the Council introduced the concept of a casement opening arrangement being an alternative to a steel construction. I note that the rooflights on the west roof-slope are in fact centre-pivots rather than casement opening, and that is again apparently acceptable to the Council.
10. I have, in my Appeal Decisions, carried out the duties imposed on me by sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and have considered the application afresh, as set out in paragraph 15 of those Decisions. In exercise of those statutory duties I have concluded as to the failings of the present rooflights on the south roof-slope, and have attached a new condition 4) that does make provision for a scheme.
11. Nothing in the Council's costs response adequately explains what condition 4) as drafted is seeking, having mind to the apparent acceptability of the rooflights on the west roof-slope. I remain of the view that to seek an inadequately described item of remedial work within such a short timescale renders the condition imprecise and unreasonable. The Council failed to take the opportunity presented by the section 73 application to revisit this wording and to issue a new permission and consent, and this led to the appeal with regard to condition 4).

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified with regard to condition 4). This conclusion therefore relates only to Appeals A and B, and no award is made with regard to Appeals C and D.

Costs Order Appeals A and B

13. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 6 of the Town and Country Planning Act 1990 as amended, and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Horsham District Council shall pay to Mr Jerry Teague, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of condition 4); such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The Appellant is now invited to submit to Horsham District 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.

S J Papworth

INSPECTOR