
Costs Decision

Site visit made on 13 June 2017

by J Ayres BA Hons, Solicitor

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

Decision date: 28th June 2017

Costs application in relation to Appeal Ref: APP/Q3115/W/17/3171181 95 High Street, Wheatley, Oxford OX33 1XP

- 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 Mark Keely of Keely Construction for a full award of costs against South Oxfordshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of a new 2 storey 1 bedroom dwelling and provision of enclosed bin store.
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Decision

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

Reasons

2. Planning Practice Guidance 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.
3. The Appellant submits that the Council has acted unreasonably in failing to take into account the lawful use of the site, has acted inconsistently in refusing the appeal proposal, and subsequently failed to substantiate its reasons for refusal.
4. The PPG makes it clear that a local planning authority is at risk of an award for costs if it fails to produce evidence to substantiate its reason for refusal on appeal and/or fails to determine similar cases in a consistent manner.
5. In determining this application I have taken account of the history of the appeal site insofar as it is relevant. The Council had previously granted planning permission for the erection of a bike shed and bin storage¹, and in doing so had concluded that a building on the appeal site would not harm the character and appearance of the area, and would preserve the setting of the listed building at No 97 High Street.
6. The appellant then submitted an application in identical terms to the appeal scheme². There had been no material change in policy, and the professional advice was that the proposal would result in less than substantial harm to the character and appearance of the conservation area. The application was

¹ Ref P15/S3048/HH

² Ref P/16/S1299/FUL

recommended for approval; however it was overturned by the Council at Committee. While the Council is not duty bound to follow the advice of its professional officers, if a different view is reached the Council should substantiate that reason for refusal.

7. At the time the appeal scheme was considered by the Council the permission granted under reference P15/S3048/HH had been substantially completed, and the Council acknowledged this in its report. In essence the proposal sought alterations to the building and the change of its permitted use; however no amendment to the description was agreed. In assessing the application, which was identical to P16/S1299/FUL, the Conservation Officer assessed the scheme as an entirely new development, and found harm to the conservation area. This conclusion related specifically to the aesthetics of the proposal failing to accord to those of a residential dwelling. In my view, the Council failed to take account of the varied examples of residential accommodation within the conservation area, and the Council failed to substantiate why the appeal proposal would result in harm to the conservation area.
8. Critically, the Council did not substantiate their reason for refusal in terms of the residential use resulting in additional harm to the conservation area above and beyond the harm caused by the extant permission. The Council did not explicitly address this in their consideration of the appeal scheme. The Council has not provided any evidence to support the change in view of the Conservation Officer.
9. I accept that the Council is required to consider an application on the merits of the scheme. Furthermore, I acknowledge that the appeal proposal is different to the surrounding built form found in the conservation area generally. However, the structure on site was granted permission, and the harm it caused to the conservation area was found to be less than substantial. I find that the Council has acted unreasonably in failing to substantiate the additional harm caused by the minor alterations and change in use of the building.
10. In the planning judgement, it is my view that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an 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 South Oxfordshire District Council shall pay to Mr Mark Keely of Keely Construction, 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 South Oxfordshire 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.

Johanna Ayres

INSPECTOR