
Costs Decisions

Site visit made on 4 June 2019

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 July 2019

Application 1 – Appeal A

**Costs application in relation to Appeal Ref: APP/T1410/W/18/3213358
Kempston, 3 Granville Road, Eastbourne**

- 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 Associated Property Owners Ltd for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing building and redevelopment to provide x 16 residential apartments (Use Class C3) (x8 net additional), new vehicle access on Granville Road and car parking.
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Application 2 – Appeal B

**Costs application in relation to Appeal Ref: APP/T1410/W/19/3224443
Kempston, 3 Granville Road, Eastbourne**

- 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 Associated Property Owners Ltd for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing building and redevelopment to provide x 16 residential apartments (Use Class C3) (x8 net additional), new vehicle access on Granville Road and car parking.
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Application 3 – Appeal C

**Costs application in relation to Appeal Ref: APP/T1410/W/19/3225628
Kempston, 3 Granville Road, Eastbourne**

- 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 Associated Property Owners Ltd for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for prior approval for the residential building to be demolished to slab level in accordance with Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decisions

Application 1

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

Application 2

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

Application 3

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

Reasons

4. The National Planning Practice Guidance (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 expense in the appeal process.
5. With regards to Application 1, The appellant submits that the council failed to follow proper procedure by referring the application to the Conservation Area Advisory Committee, a committee which did not have jurisdiction over the application. The appellant contends that the application was largely refused due to the ongoing assessment of the Conservation Area boundary and that the council placed undue significance on this factor. The appellant also asserts that in considering the application the Council failed to give due consideration and weight to relevant factors, and instead placed greater weight on unsubstantiated arguments. The appellant contends that the council has failed to substantiate its reasons for refusal of the first application, that permission should have been granted, and is seeking the costs associated with Appeal A.
6. The appellant submits that the Council continued to behave unreasonably in relation to its consideration of the second application for planning permission, which is the basis of costs Application 2. It is put to me that the council failed to objectively consider the proposal in light of the additional evidence prepared by the appellant and misdirected itself in the application of the relevant material considerations. The appellant is seeking the costs associated with the submission of the second application and subsequently Appeal B.
7. With regards to costs Application 3, the appellant contends that the Council acted unreasonably in that it has gone against the advice of its professional officers and made their decision based on incorrect and false information. It is the appellant's case that the third application, and subsequently Appeal C, were unnecessary as the council officers had already accepted the building could be demolished subject to compliance with Schedule 2, Part 11, Class B.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The appellant therefore seeks the full costs associated with Appeal C.
8. The appellant is also seeking the costs associated with maintaining the building whilst the applications and appeals were determined. These include the on-going security of the building, utility costs and Council tax. The appellant asserts that these are costs that have been incurred due to the unreasonable behaviour of the council to refuse permission, and prior approval, as set out above.
9. In response to these claims the council advises that it was clear in the officer report in identifying that the Conservation Area Advisory Committee did not have any precise remit to consider the application. It advises that the decision to refuse the application was a precautionary approach taken by the Members of the Council due to the possibility of the site having intrinsic value. The Members of the Council determined that the replacement building proposed would be unsuitable and therefore the application was refused on the grounds relating to a subjective assessment of the effect on the character and appearance of the area. The Council asserts that previous discussions relating to demolition, and the withdrawal of that as a reason for refusal, do not indicate an agreement to it. The Council also seeks to refute that the refusal of

- the third application related to false information, and argues that it was based on observations and representations made by Members of the Council.
10. While the council is not duty bound to follow the advice of its professional officers, if a different decision is reached the council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear reasoning to substantiate its reasons. In this case little evidence was put forward by the council to support its reasons for refusal. Significant representations were made by interested parties that related to the existing building on the site, and whilst I have reached a different conclusion I appreciate the effort that those parties went to in preparing and submitting evidence. However, the council has provided very limited evidence to support its reasoning with regards to the effect of the proposed replacement building. It has failed to substantiate its own case with specific reference to the reasons for refusal. I accept that there may be circumstances in which it would be suitable to adopt a precautionary approach, however the council has not provided sufficient evidence to substantiate this approach through the course of the appeals.
 11. In the planning judgement, it appears to me, that having regard to the provisions of the development plan, national legislation, national planning policy and other material considerations, the development proposed in Application 1, Application 2, and Application 3 should reasonably have been permitted. The refusal of planning permission, and prior approval, therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG.
 12. Turning then to the matter of wasted expense. The appellant has incurred wasted expenditure through the submission of Appeal A, the submission of the planning application and subsequently Appeal B, and the submission of evidence to support Appeal C. These costs were unnecessary on the basis of my findings above.
 13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award for costs is justified in relation to these matters.
 14. With regards to the costs sought for maintaining the building whilst the applications and appeals were determined, although I appreciate the appellant's frustration with the process, it would appear that the physical maintenance of the property has been minimal. It remains connected to mains services however these are, in reality, rarely used other than to ensure that the building does not fall into further disrepair. It is in the interest of the appellant to ensure that the building is sound, secure and safe whilst it is in situ. I do not have any exact amounts before me in relation to expenditure, however it was clear at the time of my site visit that the site is well secured and the building was opened specifically for my inspection. Even if permission had been granted it may have still been necessary to secure the building and maintain certain mains services whilst further work was carried out to enable the development to proceed. As such I do not consider it reasonable to award costs in this regard.

Costs Order

15. 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 Eastbourne Borough Council shall pay to Associated Property Owners Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the submission and defence of Appeal A, the costs associated with the submission and defence of the second application and Appeal B, and the submission and defence of Appeal C, along with the costs associated in making this claim; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Eastbourne Borough 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.

J Ayres

INSPECTOR