



Costs Decision

Site visit made on 3 April 2019

by E. Brownless, BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17th July 2019

Costs application in relation to Appeal Ref: APP/K0235/W/18/3218957 Old Chapel, Park Road, Stevington, MK43 7QG

- 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 Red Eagle Securities Ltd. for a full award of costs against Bedford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission described as 'change of use from building to residential (C3)'.
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Decision

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

Reasons

2. 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.
3. The application for costs is in two parts. Firstly, in relation to procedural matters the applicant cites a lack of cooperation and delays in providing information by the Council. Secondly, with regards to substantive matters, it is the applicant's case that the Council prevented development that should have been permitted. Furthermore, that the Council could have dealt with outstanding issues by way of condition.
4. Turning to the substantive issues, I have had regard to the Council's email seeking, among other things, clarification of the effect of the first-floor roof joists on the arched window heads. To my mind, whilst the proposed joists may not present a unique or unusual design solution, the issue at hand was whether the building was structurally sound and if so, whether the use of the proposed joists would cause any harm to the significance of the appeal building. Whilst the applicant points to the vagueness of the content of the email, there is no evidence before me that the applicant proactively engaged with the Council to seek clarification on the issues that had been raised.
5. Whilst the applicant considers that the commissioning of a structural report would be unreasonable, this goes to the heart of the main issues. Without this it is not clear that the building, a non-designated heritage asset, could accommodate the changes proposed. Furthermore, whilst appeal documentation suggests that such a report was prepared this has not been provided.

6. Whilst I recognise that the outcome of the application will have been a disappointment to the applicant, the Council were not unreasonable in requesting further detail concerning the structural soundness of the appeal building and the effect of any harm to the significance of the appeal building caused by the use of the proposed joists. Indeed, following consideration of the application on its merits alone, I have concurred with the Council in this regard.
7. Moreover, in consideration of the procedural aspects of this application, the applicant had not sought any pre-application advice, which would have been the appropriate process to resolve such issues. To attempt to resolve critical issues during the planning application process is impractical and of itself likely to cause delay. Likewise, by reason of the Council's Procedure Note the Council would have been entitled to proceed to issue a formal decision without any negotiation. Notwithstanding this, akin to the pre-application process, the Council had made a suggestion regarding the reduction of numbers of rooflights and had accepted amended plans during the planning application process. In this sense the Council went beyond what was required in seeking to address matters which could have informed their decision. This does not support the applicant's case that the Council acted unreasonably.
8. By reason of my findings, I do not consider that the outstanding issues were capable of being dealt with by condition. There is no guarantee that the appeal building is structurally sound and capable of accommodating the proposed works without harming the significance of the appeal building.
9. Accordingly, I do not find that the Council's failure to determine the application amounts to unreasonable behaviour. The Council has not prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan and other considerations.
10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR