
Costs Decision

Site visit made on 17 September 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 1 October 2019

Costs application in relation to Appeal Ref: APP/D3830/W/18/3213852 Great Thorndean Farm Cottage, Slough Green Lane, Warninglid RH17 5SL

- 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 & Mrs Bedford for a full award of costs against Mid Sussex District Council.
 - The appeal was against the refusal of planning permission for erection of replacement dwelling.
-

Decision

1. I refuse the application for an award of costs.

Reasons

2. The appellants' Costs Claim was made in the last 6 paragraphs of their Final Comments on the merits of the Appeal, and the Council set out their rebuttal by letter dated 29 August 2019 together with appendices.
3. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
4. The appellants' main heads of claim, repeated at paragraph 2.1 of the Council's rebuttal will be used in this Costs Decision and cover matters contained in the relevant paragraph of the Planning Practice Guidance on the type of behaviour which may give rise to a substantive award of costs against a Local Planning Authority (Paragraph: 049 Reference ID: 16-049-20140306);
5. *a) There was no evidence to support the refusal of the planning application other than the opinion of one objectionable individual.* That individual was the Conservation Officer whose role is to provide professional advice to the decision maker on heritage and conservation matters. That advice has been supplied as the Council's Appendix 1 attached to their costs rebuttal and is sufficient without further evidence to justify the decision to refuse permission. If there were '*no other evidence.....other than the opinion*' of the Conservation Officer as claimed, it is a professional opinion to which it would be reasonable for the Council's decision maker to have attached substantial weight. The lack of objection from local residents or any others, and even the support of those residents close to the site, cannot be conclusive in the consideration of the application.

6. *b) Comments made by MSDC have been vague and unsupported by any objective analysis and appear contradictory when compared with consents granted for other buildings on the farm.* On the first limb of this claim, the views of the Conservation Officer are well articulated and clear, and due regard was had to the revised plans and lowered ridge height. The view was expressed that any more radical change would need to be a new application, and it is the case that a further application resulted in approval being given. The second limb of the claim appears to overlap with item c) as follows;
7. *c) That MSDC appear not to be making decisions in a consistent manner given the positive decision given to the owners of Oakwood House in 2014 and The Old Dairy in 2018.* Consistency is important and a possible reason for an award of costs is a Council not determining similar cases in a consistent manner (bullet point 7, Paragraph: 049 Reference ID: 16-049-20140306). The appellants have not drawn attention to any sufficiently similar cases for replacement houses, and the 2 cases referred to, whilst nearby or even adjacent, are not strictly comparable. The works to the Barn and the Dairy (Ref: DM/17/1837 and DM/17/1846) are substantial and the latter in particular includes a significant increase in useable floor area and height, although this is not necessarily a good measure of acceptability as there are other considerations of location and relationship with the farmstead that have rightly been taken into account by the Council.
8. *d) MSDC's attitude towards the Appellants has at times been obstructive.* The Council has duties under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as set out in the accompanying Appeal Decision as well as those imposed by Section 38(6) of the Planning and Compulsory Purchase Act 2004 to have regard to the Development Plan. The Council set out the pre-application discussions that resulted in the acceptable scheme being approved and there is no evidence of being obstructive, rather the evidence is of a considered objection to the initial proposals and a willingness to engage in discussions to meet the appellants' requirements while preserving the significance of heritage assets.
9. The process detailed is the reasonable exercise of judgement by the Council based on the professional opinion of their Conservation Officer in pursuance of statutory requirements over the preservation of the setting of listed buildings and backed by Development Plan policies to that effect. The appellants have incurred fees in producing various schemes, but that is not an unreasonable situation in order to progress a scheme.
10. The appellants refer to delay and to the stress that they consider the process has caused. However, the Planning Practice Guidance makes clear that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission (Paragraph: 032 Reference ID: 16-032-20140306). I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Papworth

INSPECTOR