
Costs Decision

Site visit made on 8 October 2019

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Costs application in relation to Appeal Ref: APP/J0405/W/19/3233999 Old Oak House, 23B Old End, Padbury MK18 2BE

- 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 E Pranevicius for a full award of costs against Aylesbury Vale District Council.
 - The appeal was against the refusal of planning permission for the proposed development described as 'construction of new dwelling (retrospective / resubmission)'.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, 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 applicant sets out in their letters dated 7 and 28 October 2019 that, had the Council grappled with the extant permission and fall-back that the appeal would have been avoided. The failures of the Council to recognize that extant permission exists and to consider the associated permitted development rights from such a development undermined their assessment of the case. Furthermore, the applicant suggests that the Council did not analyse matters correctly and failed to recognize the significance of the reduction of the first-floor development proposed.
4. I have had regard to the Council's 'Case Officer Report and Recommendation'. I find that this sets out the planning context, including the planning history of the site in some detail. I consider that it acknowledges and demonstrates an understanding of the events that had led to the proposal before them. Some inconsistency within the Council's 'Statement of Case' is acknowledged by the Council. The Council have sought to clarify this within their rebuttal of the applicant's costs application. On balance, I am satisfied that the Council's position is sufficiently clear despite the errors and this of itself does not amount to unreasonable behaviour.
5. As I set out in my Appeal Decision, it is a notable dispute between the parties as to whether the consented scheme (LPA ref: 15/01216/APP) remains extant. However, I consider that this is a matter to be determined under section 191/192 of the Town and Country Planning Act 1990 (the Act). Similarly, the extent of permitted development rights and what may be achieved within such

- parameters on a substantially completed scheme. Based on the evidence available to me, including the case law referenced by the applicant, I consider that it was not unreasonable for the Council to conclude that the consented scheme was not extant. They have exercised a planning judgement and the applicant can seek to remedy this through s191/192 of the Act.
6. Furthermore, given the Council's conclusion that there is no extant approval, I consider that it was not unreasonable for them to not specifically address the potential fall-back position in relation to the implementation of permitted development rights against the originally consented scheme. However, in light of the contentious nature of the matter, it would have been helpful to do so at the point of their decision.
 7. Nonetheless, this potential fall-back position is a matter I have sought to address, as far as reasonable, within my Appeal Decision. For the reasons set out within my Appeal Decision I have attributed negligible weight to the potential implementation of permitted development rights in the context of the evidence available to me. As such, I do not consider that it would have necessarily made any difference to the Council's decision even if they had of made an assessment at the point of their decision.
 8. Turning to the significance of the reduction of the built form over the scheme dismissed at appeal (ref: APP/J0405/W/18/3208655). I have found that the planning officer report sets out the heritage advice that they received and also refers to it within their assessment. Both the heritage advice, and planning officer report acknowledge the reduction of the built form, albeit briefly. Additionally, the report demonstrates that the Council has clearly considered the previous Appeal Decision. They demonstrate a clear appreciation of the previous scheme, the issues found by the Inspector and how some issues have been addressed and how others remain. I consider that they satisfactorily demonstrate an analysis and overall planning balance within their assessment.
 9. Furthermore, I have had regard to the examples of unreasonable behaviour cited by the applicant. However, based on the evidence before me, and having regard to the specific issues raised by the applicant, I do not find any such unreasonable behaviour in the Council's handling of the matter. I note that the Council have engaged with the applicant at various stages and provided written responses as part of pre-application discussions.
 10. In planning decision making each case must be assessed on its own merits. I am satisfied that the Council made its own planning judgement and substantiated the grounds for refusal based on the most relevant material considerations at that time. It is a matter for the decision maker to determine the weight to be attributed to the various material considerations.
 11. Therefore, in conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

James Taylor

INSPECTOR