
Costs Decision

Hearing held on 19 November 2019

Site visit made on 19 November 2019

by David Prentis BA BPI MRTPI

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

Decision date: 3 December 2019

Costs application in relation to Appeal Ref: APP/W0530/W/19/3229828 The Milking Parlour, High Street, Fen Ditton, Cambridgeshire CB5 8ST

- 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 Michael Middleton for a full award of costs against South Cambridgeshire District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for a ground and first floor extension.
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Decision

1. The application is allowed but is limited to a partial award of costs in the terms set out below.

Reasons

2. 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 was made in writing. It was argued that the Council's actions in relation to the question of whether the Milking Parlour is a listed building were unreasonable, on both substantive and procedural grounds. It was also argued that the Council had refused to engage with the applicant and had given insufficient warning of its intention to refuse the application. The applicant sought a full award. At the hearing, the applicant confirmed that, if the application for a full award was not successful, then a partial award should also be considered.
4. The Council's response was also made in writing. It stated that the Council had amended the reasons for refusal to remove the references to curtilage listing. This was said to be partly in response to the applicant's representations but primarily because the Council had discovered that it had previously represented (in 2004) that the Milking Parlour was not a listed building. The Council had removed reference to curtilage listing at the earliest opportunity in the interests of consistency. The Council argued that the applicant had failed to provide a sufficient heritage assessment. The allegations of procedural unreasonableness were resisted.
5. The written application alleged that, having accepted that the Milking Parlour was not listed, the Council effectively came up with a new case based on impacts on the settings of listed buildings within the conservation area. That

interpretation of events is not consistent with the Officer's Report which makes clear that the Council was concerned with the effect of the proposal on the setting of Fen Ditton Hall, and with the effect on the conservation area, when it made its decision. At the hearing, the applicant accepted that those planning judgements were not dependant on the proposition that the Milking Parlour was a listed building. Having accepted that point, the applicant emphasised the importance of giving full reasons for refusal which are both clear and precise¹. I return to that point below.

6. As noted in my appeal decision, reasons for refusal (1) and (2) were based on the premise that the Milking Parlour is a listed building, by virtue of being within the curtilage of the Grade II* listed Barn North West of Fen Ditton Hall. Reason (3) alleged harm to the conservation area and to the setting of an unspecified listed building. Reason (4) also alleged harm to the conservation area, as well as harm to the '*curtilage listed property*'. Although the Council sought to amend reasons (3) and (4), I do not consider that was a legitimate exercise once the decision had been made. I turn now to the reasons for refusal.

Reasons (1) and (2)

7. In 2004 the Council represented that the Milking Parlour was not a listed building. In 2017 the Council approved an application for listed building consent for a front extension to the building so, at that stage, must have considered the building to be listed. The Council took the same view in 2018 but this was challenged by the applicant. I have no reason to doubt that, as the applicant stated at the hearing, the Counsel's opinion dated 12 December 2018 was shared with the Council. The opinion was directed to the Council's assertion that the Milking Parlour was within the curtilage of Fen Ditton Hall. However, the factual chronology set out therein was equally relevant to the question of whether the Milking Parlour was within the curtilage of the Barn North West of Fen Ditton Hall at the time that building was listed.
8. At the hearing the Council accepted that, (at the time it decided the appeal application), it was aware that South Barn and the building now known as the Milking Parlour had been sold as a development parcel in 1974. This was before the Barn North West of Fen Ditton Hall was listed in 1977. Moreover, the Council was aware that the Milking Parlour was physically separated from the listed Barn by an access track. I asked the Council why, in the light of those facts, it concluded that the Milking Parlour was listed. The Council was not able to point to any specific factors that might have justified such a conclusion.
9. In my view, as of March 2019, there was simply no credible reason for finding that the Milking Parlour was curtilage listed to the Barn North West of Fen Ditton Hall. It is no defence to say that the heritage assessment was inadequate because the relevant information was before the Council. If the Council had reviewed the matter properly it could only reasonably have concluded that the Milking Parlour was not a listed building. Reasons for refusal (1) and (2) were unreasonable. That unreasonable behaviour led to unnecessary expense in the appeal process because the applicant's professional team had to respond to reasons (1) and (2).

¹ As required by Article 31(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2010

10. At the hearing there were submissions from the Council and the applicant about whether reasons (1) and (2) were withdrawn in a timely manner and about the Council's motivation for withdrawing them. However, given that they were unreasonable in the first place, it is not necessary for me to comment further.

Reason (3)

11. This reason stated that the proposal would not be compatible with its location within the setting of a listed building. The reason for refusal was not clear and precise, as it should have been, because it did not identify which listed building it related to. Whilst that was in itself unreasonable, it was clear from the Officer's Report that reason (3) was directed to the setting of Fen Ditton Hall. It was obvious that the applicant would need to address this matter in evidence so, although the reason for refusal was poorly worded, this did not lead to any unnecessary expense.
12. During the appeal process the Council sought to extend the scope of reason (3) by reference to two further listed buildings – the Barn North West of Fen Ditton Hall and the Church of St Mary Virgin. That was unreasonable because there was no evidence that these buildings were of concern at the time the Council's decision was made. The unreasonable behaviour led to unnecessary expense in that the applicant had to produce evidence in relation to these buildings.

Reason (4)

13. This reason stated that

The proposal is considered to erode the ability to appreciate the form and character of the dwelling to the detriment of the Conservation Area as well as its architectural and historic significance of the curtilage listed property.

14. The words I have underlined were not relied on at the hearing. However, insofar as reason (4) refers to the conservation area it is not dependant on the premise that the building is listed. This element of reason (4) is sufficiently clear and was supported by evidence at the hearing. It was not unreasonable.

Other grounds

15. I have considered the other matters raised in the written application and response and at the hearing but they do not alter my conclusions.

Conclusions

16. The Council was able to substantiate its reasons for refusal relating to the conservation area and the setting of Fen Ditton Hall. A full award is not justified in this case. However, there was unreasonable behaviour leading to unnecessary expense in relation to reasons (1) and (2) and the Council's attempt to extend the scope of reason (3). I conclude that a partial award is justified.

Costs Order

17. 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 Cambridgeshire District Council shall pay to Mr Michael Middleton the

costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in

- a) preparing to respond to reasons for refusal (1) and (2) during the period starting with the date of the Council's decision and ending 10 September 2019, and
- b) responding to the allegation that the proposal would harm the settings of the two listed buildings Barn North West of Fen Ditton Hall and the Church of St Mary Virgin,

such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to South Cambridgeshire 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.

David Prentis

Inspector