
Costs Decisions

Site visit made on 21 August 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Costs application in relation to Appeal Ref: APP/V4630/W/19/3228364 65 Wood Lane, Streetly, Walsall, West Midlands B74 3LS

- 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).
 - An application is made by Walsall Metropolitan Borough Council for a full award of costs against Mr Ian Huskisson and an application is also made for a full award of costs by Mr Ian Huskisson against the Walsall Metropolitan Borough Council.
 - The appeal was against the refusal to grant approval of reserved matters submitted for approval following the outline grant of planning permission for removal of mobile caravan unit, demolition of garages, alterations to residential curtilage and erection of a single dwelling and associated works.
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Decisions

1. The application for an award of costs by Mr Ian Huskisson against Walsall Metropolitan Borough Council is refused.
2. The application for an award of costs by Walsall Metropolitan Borough Council against Mr Ian Huskisson is also refused.

Procedural Matters

3. Both parties have made claim for costs against each other. A number of the costs documents relate to both the claim against the other party and responses to the other party's claim and it is therefore appropriate to deal with both parties costs claims in one decision. I have referred to the parties as being the applicant and the Council for clarity.

Reasons

4. Paragraph 30 of the Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. The parties have both submitted a large amount of material with regard to their claim for costs. The Planning Practice Guidance (PPG) clearly states that costs cannot be claimed for the period of the determination of the planning application.¹The Council makes that point at the beginning of their claim for costs but then refers to the certificate of ownership signed at the beginning of the application process.

¹ Planning Practice Guidance 033 (Revision date 06.03.2014)

6. The applicant states at paragraph AC1 of his application for costs that it is confined to the costs of this appeal but then refers to the planning application submitted in February 2016.
7. In considering the claims for costs, in light of the PPG, I am therefore disregarding matters that occurred before the appeal process began unless they become relevant in relation to any other element of the costs claims.
8. Matters which therefore do not fall within the costs claim include any issues with the ownership certificate, the conditions attached to the outline consent, delay and an application to discharge conditions and any formal complaints.
9. With regard to the appeal itself, the main issue was simply whether or not the appeal dwelling was materially larger than the building that it replaced which is a recognised Green Belt test.

The Council's claim

10. The applicant originally requested an inquiry rather than written representations in terms of appropriate procedure. Both parties then refer to the costs of having to address a Statement of Common Ground. However, the applicant was entitled to make representations about his choice of the type of procedure that was appropriate. As the Statement of Common Ground formed part of the procedural process, I do not consider that submitting or dealing with a Statement of Common Ground results in unreasonable behaviour on the part of either party. Had the applicant not requested the Inquiry procedure, it is not necessarily the case that less information would have been provided by the applicant.
11. The Council considers that the applicant has misunderstood the application and appeal process and that the content of the appeal is incorrect. However, the applicant has a right to appeal and he has sought to address the issues raised by the Council in its reasons for refusal.
12. The Council states that no material justification was put forward by the applicant that the appeal proposal would be acceptable in its Green Belt location. Although I have dismissed the appeal, whether or not a replacement building would be materially larger than any existing buildings is a matter of planning judgement. The applicant was entitled to appeal and has addressed matters such as openness. Although he has referred to footprint, he has also addressed height and scale.
13. Furthermore, he has sought to provide very special circumstances and to indicate why he considers that the appeal dwelling is not inappropriate.

The applicant's claim

14. The issue of delay forms part of the applicant's claim for costs which is set out in eight separate points at Paragraph AC5. However, the issue of delay relates to issues that arose prior to the appeal process. The first seven matters also relate to matters that occurred prior to the submission of the reserved matters that lead to this appeal. The final point is the duplication of effort due to having to address certain issues. However, the history of whether or not the Council was correct in turning away previous applications does not alter the nature of the appeal. How the applicant chooses to deal with the appeal is essentially a

- matter for him but the reasons for refusal are clear and relate to Green Belt harm.
15. He expresses concern with the reasons for refusal and states that they read like a reason for refusal on a full planning application rather than reserved matters. However, the outline permission reserved all matters other than access and in principle permitted a dwelling. As the reserved matters application included details of that dwelling, the Council's reason for refusal correctly addressed the issues with that dwelling and stated that it was inappropriate development in the Green Belt and impacted upon openness.
 16. I do not therefore agree that the reasons for refusal are technically inappropriate and any application for a dwelling in the Green Belt would need to address the issues raised. There is no suggestion from the Council that the application was for a second permission but the outline planning permission established only the principle of a dwelling. It is not necessary for the Council to set out in the reasons for refusal why each of the alleged very special circumstances does not outweigh any identified harm.
 17. Although the applicant considers that his approach to the reasons for refusal would have simplified the appeal and would have focused on scale that is all that was required under the Council's reasons for refusal in any event. Although the applicant has chosen to suggest his own reasons for refusal it is clear from the wording that he understood the issues raised by the Council's reasons i.e. the dwelling was materially larger than the buildings that it would have replaced and that there were no special circumstances that outweigh the Green Belt harm. However, the applicant cannot then argue that the Council's reasons unnecessarily complicated the appeal when he understood the nature of the reasons and what was required to address them.
 18. The basis of the applicant's claim was that the Council had not processed the planning application correctly and that the reasons for refusal were unsupportable technically. However, I have not found that to be the case, the reasons correctly refer to inappropriate development and whether or not there are very special circumstances that outweigh harm and the applicant's suggested reasons for refusal address the same issues.
 19. The Council did include a number of policies which the applicant has addressed. However, the applicant could have simply said that those policies were not referred to elsewhere in the Council's case and were not relevant. With regard to appearance, landscaping and layout, the Council's delegated report clearly sets out scale, appearance, landscaping and layout as the appropriate headings and deals with each in turn.
 20. The applicant in his final comments has included a costs decision made in 2014. However, as the costs decision appears to relate to a successful appeal against conditions imposed upon a grant of planning permission, it is not comparable to this appeal. In any event, as with appeal decisions, any costs decision will be based upon the particular merits of the appeal.
 21. Dealing with the nine cost points raised at ES29 by the applicant, the issue of the previous conditions application and whether or not that was valid has no bearing on this appeal. The Council's reasons for refusal do state that the appeal proposal is inappropriate and very special circumstances do not exist which is the main issue for the appeal. The Council has addressed scale. The

other reserved matters are dealt with in the delegated report. The percentage increase in volume is a relevant consideration and was referred to by the applicant as well as the Council. The Council did address very special circumstances and indicated that they were not sufficient. The Council made clear that scale was the issue and size is clearly relevant to scale. In terms of repetitions, the number of documents filed has led to repetition by both parties. The nature of the costs arguments put by both parties does result in both the merits and the costs being referred to.

22. In terms of progressing development at the appeal site, the Council did suggest submitting a further planning application with a smaller dwelling and it was then a matter of choice for the applicant as to whether he chose to pursue that option. At page AC2/8 he states that the Council's case is almost entirely that the proposed building would be materially larger than the two structures that it would replace and that is not something that could not have been resolved by condition on approval. The main issue was whether is not the new dwelling would be materially larger than the existing buildings and had details been put forward that satisfied that Green Belt exception then reserved matters including scale would have been approved.
23. A number of points made by both parties do not relate to the issue of costs incurred during the appeal process and the amount of documentation produced reflects each party's wish to answer all the points raised by the other whether or not they relate to the appeal process.
24. However, having considered the points made by both parties which do relate directly to the appeal, I do not find that it is appropriate in the absence of unreasonable behaviour by either party to make an award of costs against either party.

Conclusion

25. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated by either party.

E Griffin

INSPECTOR