
Costs Decision

Site visit made on 10 December 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Costs application in relation to Appeal Ref: APP/D3125/W/19/3237054 Kelmscott Manor, Lechlade, Kelmscott GL7 3HJ

- 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 John Lewis of the Society of Antiquaries of London for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably in respect of the substantive matters under appeal by rejecting the proposed variation to the wording of condition 6 and requiring tickets to be sold from the car park as part of a management plan to be agreed. They failed to specify reasonable grounds for such a requirement that had a basis in the development plan or national policy. The decision notice referred to impact on the appearance of the Kelmscott conservation area when this was not mentioned in the reason for condition 6 on the original planning permission¹ and was not detailed in the report² presented to the Lowlands Area Planning Sub-Committee on 20 May 2019. Moreover, the Council failed to specify the parts of the National Planning Policy Framework (the Framework) then in force, that they found the proposal conflicted with.
4. PPG further indicates that local planning authorities will be at risk of an award being made against them if they impose a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the Framework on planning conditions.

¹ Reference 18/01509/FUL dated 6 November 2018

² Reference 19/00493/S73

5. Paragraph 55 of the Framework and PPG that sets out that planning conditions must pass all 6 tests is well established. Moreover, PPG explicitly states that it is good practice to keep the number of conditions to a minimum and the rigorous application of the tests can reduce the need for conditions³. As such, the Council should have been aware of the limitations and guidance relating to the imposition of conditions.
6. The appeal proposal outlined why the mandatory requirement to obtain tickets in the car park prior to entering Kelmscott Manor specified by condition 6 posed practical difficulties for the applicant and proposed a variation to the wording which would nevertheless, have retained a requirement to agree a management plan. The Council has not demonstrated with clear evidence why such a prescriptive measure was necessary, especially given that they had already approved the original permission which made specific provision for a visitor reception area and ticketing facilities at Kelmscott Manor.
7. Furthermore, the Council state that they had made it very clear to the appellant that the need for tickets to be sold or validated in the car park for entry to Kelmscott Manor was not a critical issue for the management plan⁴. They state further that it was never the Council's intention to have a strict requirement for tickets to be sold in the car park⁵, rather the wording was intended to be helpful guidance as to the likely requirements of the management plan. That being the case, it follows that they ought not to have rejected the proposed variation in the formal wording which would have omitted the element that was unintended. Given that one of the tests that the Council had to consider as part of the application was the precision of the condition, it was unreasonable to retain this requirement.
8. Moreover, the decision notice cited policies that did not clearly relate to the reason for the imposition of condition 6 as stated on the original planning permission decision notice issued in November 2018. Reference was made to residential amenities and the visual appearance of the Kelmscott conservation area, as well as policies H6 and EH10 of the West Oxfordshire Local Plan 2031, September 2018. However, neither the decision notice nor the committee report clearly explains why the proposed variation to the wording of condition 6 would result in harm that would conflict with these policies. Neither is listed as relevant policy in section 4 of the committee report⁶ which goes on to explicitly state under the heading of 'Residential Amenities' that the matter is not relevant to the application.
9. Additionally, notwithstanding the general duty in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, no mention is made regarding the impact on the conservation area in the report until the reason for refusal. Furthermore, as policy H6 relates to changes to existing housing it is wholly unclear why it appears in the reason for refusal. As a consequence, although the Council subsequently referred to the conservation area in its appeal statement, the refusal reason on the decision notice, and the underlying policy basis for rejecting the application in the committee report is confusing.

³ PPG Paragraph 018 Ref ID: 21a-018-20190723

⁴ Paragraph 2.7 LPA's response to the appellant's Application of an Award of Costs

⁵ Page 7 LPA's response to the appellant's Application of an Award of Costs

⁶ Reference 19/00493/S73

10. Even if the Council had concerns in relation to the management plan submitted, the rejection of the proposed variation wording, which would still have provided for a requirement for management measures to be agreed, was unjustifiably inflexible. Furthermore, having regard to national planning policy, as will be seen from my ultimate decision, the refusal to vary the wording of condition 6 in the manner applied for maintained a condition that failed the tests of necessity and reasonableness.
11. These factors, when taken together, amount to unreasonable behaviour which is contrary to the guidance in the PPG. Had the Council acted reasonably in reviewing condition 6, they ought to have at least permitted a variation to the wording of the condition in line with the version suggested by the applicant. This would have avoided the need for the appeal and therefore, there is a direct causal link from the unreasonable behaviour of the Council which resulted in unnecessary expense in making the appeal.
12. The Council asserts that the costs associated with the evidence provided by the applicant in relation to transport⁷ would not constitute an unnecessary appeal related cost as it would have been required whether the appellant appealed or not. Nevertheless, the statement and evidence provided is a direct response to the refusal reason on the decision notice and considers the matter of impact on residential amenities. Based on the evidence before me, it is not demonstrated that this level or format of evidence would otherwise have been required in order to discharge a varied condition. Moreover, the applicant's case focussed on the refusal reason on the decision notice, and the underlying policy basis in the committee report which I have found to be confusing. As such, the evidence forms an integral part of the applicant's appeal case.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Helen O'Connor

Inspector

Costs Order

14. 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 West Oxfordshire District Council shall pay to Mr John Lewis of the Society of Antiquaries of London, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to West Oxfordshire 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.

⁷ Transport Planning Associates, September 2019