



Costs Decision

Site visit made on 27 November 2019

by Mr Kim Bennett BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Costs application in relation to Appeal Ref: APP/N1920/Y/18/3214293 22 High Street, Bushey WD23 3DN

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Merritt for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent for the demolition of existing single storey rear extension (not original). Construction of new single storey rear extension. Listed property restoration – structure of original house to remain unaffected.
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Decision

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

Reasons

2. The 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 evidence before me shows that an application for planning permission for the proposed works was submitted in January 2018, followed by an application for listed building consent in April of that year. The latter is the subject of an appeal against non-determination and a separate decision. Discussions between the appellants and the Council appear to have taken place between May and July 2018 in relation to the need for more information, primarily relating to clarification on finishes and submission of historic OS Maps. Although the appellants consider that such information was excessive, it does not seem to me to be unreasonable given that the proposal involved a listed building and therefore the need to be satisfied that the special architectural or historic interest of that building would be preserved.
4. Nevertheless, the required information was submitted by July 2018. Thereafter, the Council appears to have reconsidered its position and indicated to the appellants that the application was likely to be refused. This appears to have come as a surprise to the appellants given that they had been in regular correspondence in relation to the additional information. Exchanges between the appellants and the Council continued over July and August culminating in an email from the appellant on 3 September 2018, requesting that a decision was made within 7 days. The appellants advise that other than an

acknowledgement, no response was received from the Council and there is no evidence before me to the contrary. In the absence of any response, the appellants lodged an appeal against non-determination. The Council subsequently prepared an officer report which set out its reasoning that there was considered to be no harm to the heritage asset and made a decision on 30 October 2018 to grant listed building consent. However, by that time, the appeal had been validated on 26 October 2018 and therefore the Council no longer had any jurisdiction to make the decision.

5. The Appellants refers to the Planning Practice Guidance which sets out a number of instances which could constitute unreasonable behaviour, and which they consider the Council was at fault with. These include: delaying development which should clearly be permitted; vague and generalised assertions about a proposal's impact; lack of co-operation with the appellants and their representatives; and failure to adhere to deadlines.
6. In response, the Council considers that although it aspires to the 8 week determination period, there are resource implications in doing so. It further comments that officer opinions were given in good faith and that the application was subsequently determined on the basis of information received or observed.
7. I can fully appreciate the resource issues that Councils face and that it is not always possible to determine an application within the prescribed period, particularly if amendments are being sought. In my view that does not amount to unreasonable behaviour albeit there is no evidence before me that any request for an extension of time was sought by the Council.
8. However, it would appear that by July 2018 the Council was in full possession of all the information it needed to determine the application. Furthermore, there is no clear evidence before me as to why there were continuing delays following that period, particularly as the officer report and subsequent 'decision' by the Council clearly show that it had come to the view that listed building consent should be granted. Additionally, there is no explanation from the Council as to why it failed to respond to the appellants in any meaningful way following their email of 3 September. At that stage I can fully appreciate the appellants frustration at being unable to secure any firm explanation from the Council as to how to progress their application and that they were left with little option but to appeal against non-determination.
9. In the light of the above and in the absence of any satisfactory explanation from the Council to explain the reasons for delay following July 2018, particularly in the context that it then subsequently found the application to be acceptable, I consider that its processing of the application following July 2018 was clearly contrary to the examples set out in the Practice Guidance in respect of unreasonable behaviour, and has directly caused an unnecessary appeal.
10. 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.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas)

Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hertsmere Borough Council shall pay to Mr & Mrs Merritt, 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.

12. The applicant is now invited to submit to Hertsmere Borough 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.

Kim Bennett

INSPECTOR