
Costs Decision

Hearing held on 16 January 2020

Site visit made on 16 January 2020

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Costs application in relation to Appeal Ref: APP/C1570/W/19/3231568 The Bell House, High Street, Henham CM22 6AR

- 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 Martin Gay, Marsta Properties Ltd for a partial award of costs against Uttlesford District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of three new dwellings on the land to the rear of Bell House, including the demolition of the existing garage for Bell House and its replacement as an extension to Bell House.
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Decision

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

Reasons

2. The applicant seeks an award of costs in respect of the abortive costs of preparing the evidence rebutting the reason for refusal concerning heritage matters, which was withdrawn by the Council when it submitted its statement of case. The applicant claims the costs of preparing expert evidence for his statement of case, as well as the expert preparation for and attendance during the Hearing.
3. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG provides examples of unreasonable behaviour¹ which includes the withdrawal of any reason for refusal. By withdrawing the reason for refusal, the Council acknowledged that it had no justification to apply it. It follows that the expense incurred by the appellant in rebutting it when he made his appeal was unnecessary. Therefore, to the point at which the heritage reason for refusal was withdrawn, the appellant is entitled to recover his costs associated with rebutting the heritage reason for refusal.
5. There was much debate at the Hearing about the delay in agreeing a statement of common ground, and I have noted the exchanges about its contents.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and paragraph: 049 Reference ID: 16-049-20140306

However, the heritage reason for refusal was clearly withdrawn in the Council's statement of case, firstly because it said so in plain terms, and secondly because it offered no further evidence on heritage matters.

6. Therefore, at the point the Council submitted its statement of case, its liability for costs as regards unreasonable behaviour in respect of the heritage reason for refusal, ended. That the appellant chose to have expert representation on heritage matters beyond that point, including at the Hearing, is a matter for him.

Conclusion

7. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and that a partial award of costs in respect of professional advice and the preparation of evidence concerning heritage matters up to the point of the submission of the Council's statement of case, is justified.

Costs Order

8. 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 Uttlesford District Council shall pay to Mr Martin Gay, Marsta Properties Ltd, the costs of the appeal proceedings described in the heading of this decision in so far as they relate to professional advice and the preparation of evidence concerning heritage matters up to the point of the submission of the Council's statement of case; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Uttlesford 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.

Patrick Whelan

INSPECTOR