



Costs Decision

Site visit made on 10 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Costs application in relation to Appeal Ref: APP/W3005/W/19/3238140 Sunbeam House, West Street, Hucknall NG15 7BW

- 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 Graham Field of Need2View against Ashfield District Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described on the application form supporting application Ref V/2018/0734, dated 10 November 2018 as the 'demolition of existing buildings and construction of 9 dwellings with associated access, carparking and amenity space'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. With regard to the PPG, the appellant's case for a full award is on both procedural and substantive grounds (albeit that the two elements of the claim overlap).³ Procedurally the appellant contends that the Council unduly delayed the determination of application Ref V/2018/0734, dated 10 November 2018, refused via decision notice dated 29 March 2019. That is a period of approximately 20 weeks, relative to the statutory period of 8 weeks.
4. In summary application Ref V/2018/0734 was for the demolition of locally-listed Sunbeam House, and the erection of nine dwellings in its place with all matters reserved for future determination.⁴ There is a detailed planning history to Sunbeam House, as set out in the appeal decision to which this costs application relates. Of particular relevance is that, via decision notice dated 18 October 2017, Ref V/2017/0550, the Council approved the proposed demolition of Sunbeam House under the provisions of Schedule 2, Part 11, Class B of the

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

³ There is evidence before me of some back-and-forth as to whether or not application Ref V/2018/0734 was to be considered at planning committee as opposed to at officer level. However there is no indication that the Council failed to adhere to its scheme of delegations, or internal processes for making such administrative decisions in that regard. In any event, as reasoned in the body of this decision, that issue not determinative.

⁴ Access, appearance, landscaping, layout and scale, as set out in article 2 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended.

Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the 'GPDO').

5. During the period set out in paragraph 3 above, the Council made a direction under article 4 of the GPDO, dated 13 February 2019. That was with the intention of preventing the demolition of Sunbeam House. Further, on 11 March 2019, the Council resolved to designate Hucknall Town Centre as a Conservation Area ('CA').⁵ That designation took effect on 20 March 2019. Both the Article 4 Direction and CA designation have the effect of withdrawing Part 11, Class B rights from the appeal site as they applied in October 2017.
6. The appellant is of the view that, had the latest application been dealt with expediently, it would have been determined before the effective date of both the Article 4 Direction and CA designation. Chronologically that is true. However the Council's current position is that demolition of Sunbeam House approved via application Ref V/2017/0550, within the relevant terms of the GPDO, could legitimately be undertaken until 18 October 2022. That is with regard to relevant case law.⁶ However the Council's initial position in that respect was that the Article 4 Direction had effectively annulled the ability to demolish Sunbeam House. I refer to those concepts as the Council's 'current position' and 'initial position'.
7. I understand the Council's initial position informed an officer report related to application Ref V/2018/0734, which was due to be considered at planning committee on 28 February 2019. However I am told that item was pulled from the agenda as, approaching that committee meeting and informed by exchanges with the appellant, the Council moved towards their current position. A later officer report was then put to committee on 28 March 2019 recommending that permission be refused, and that position was carried by Members.
8. The appellant contends that there is a different tone in the first officer report compared to the second, the latter being less supportive of the scheme. Whether or not that is the case is incidental here; the second officer report explains that, on account of extant approval for the demolition of Sunbeam House, notwithstanding the Article 4 Direction and CA designation 'an objection to the proposed demolition could not be made on conservation policy grounds... the demolition of the building is not for consideration'. That aligns with the appellant's position, and in any event Members are not bound to accept the recommendations of officers in reaching a decision.
9. The Council's initial position incorrectly assumed that the Article 4 Direction could prevent the approved demolition of Sunbeam House. However, as described in the associated appeal decision, Sunbeam House is of some historic interest. The property was included in the Council's local list of heritage assets in September 2013, pre-dating approval for its demolition. Paragraph 197 of the National Planning Policy Framework ('NPPF') guides that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account, relative to its significance. Also, at the time the Article 4 Direction

⁵ Under the provisions of Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

⁶ Orange Personal Communications Services Ltd. & Ors, R (on the application of) v London Borough of Islington [2006] EWCA Civ 157.

was made, some 16 months had elapsed since the date on which demolition of Sunbeam House was approved. In that context, in my view, it was not unreasonable for the Council to seek to preserve the building.⁷

10. The CA relates to a far wider area than the appeal site. The appellant would also have been aware of the potential for such a designation to be made; an informative appended to the Council's approval of the demolition of Sunbeam House Ref indicated that the appeal site fell within an area proposed for designation as such. Paragraph 14 of the Inspector's reasoning in appeal Ref APP/C5690/W/17/3172093 elsewhere, brought to my attention by the Council, is that it is not unreasonable to consider the prospect of a site being included within a Conservation Area. I agree with that position, albeit that is essentially a logical position (rather than one with a bearing on the specifics of the associated appeal).
11. Summarising the above, whilst I accept the determination of application Ref V/2018/0734 took some time, there is nothing before me to indicate that was as a result of unreasonable procedural behaviour by the local planning authority. It appears that period elapsed as a result of the complexity of attempting to reconcile different planning objectives and procedures rather than by conscious design. Ultimately neither the Article 4 Direction nor Conservation Area affect the appellant's ability to demolish Sunbeam House in accordance with approval Ref V/2017/0550. Furthermore, there is also nothing to indicate that the second officer report, the basis on which a decision was reached, is factually incorrect.
12. The appellant's substantive argument is that, being in outline with all matters reserved and compliant with national and local information requirements, in citing the lack of appropriate details the Council refused application Ref V/2018/0734 without 'good cause'. However I do not accept the second strand of the appellant's argument for three reasons.
13. Firstly, the onus falls principally on an applicant to justify a proposal.⁸ Secondly it is not disputed that the illustrative plan, 'Field 01a' shows certain parking provision directly behind a bus stop which the County Council have indicated would be unfeasible to relocate, and also that the development might not comply with the recommendations of the Council's Residential Design Supplementary Planning Document and Parking Supplementary Planning Document, taken at face value.⁹ Thirdly, the appeal site now falls within the Hucknall Town Centre Conservation Area and is part of the surroundings in which the Grade II* Church of St. Mary Magdalene is experienced, both designated heritage assets in respect of which specific legal duties to have regard to character and appearance apply.
14. Whilst, on the balance of the evidence before me and a matter of judgement, I reached a different view to the Council on the acceptability of the development proposed, the information supporting the application in respect of the above matters was limited (and inevitably illustrative). Consequently, in my view, it

⁷ The provisions of the GPDO limit a local authority's consideration as regards demolition to the method of demolition and site restoration. There is no indication that the making of the Article 4 Direction is, or has been, subject to formal challenge.

⁸ Section 62 of the Town and Country Planning Act 1990.

⁹ Both adopted November 2014.

was not unreasonable for the Council to express reservations with the justification for the scheme in respect of its integration with its surroundings, and to refuse permission on that basis.

15. The Council's second officer report and appeal statement holds the development proposed up against relevant elements of the development plan, elements of the NPPF and statutory provisions, based on detailed observations of the site and its surroundings. In that context the position arrived at by the Council is based on sound observations and a matter of planning judgement rather than substantive shortcomings. For the above reasons, and with regard to the approach in the PPG, it has not been demonstrated that unreasonable behaviour resulting in unnecessary or wasted expenses occurred.

Conclusion

16. Having taken account of all other matters raised, I therefore conclude that no action or inaction taken by the Council in this instance amounts to unreasonable behaviour resulting in unnecessary expense. An award of costs is therefore not justified.

Thomas Bristow
INSPECTOR