
Costs Decision

Site visit made on 23 June 2020 by John Gunn DipTP Dip DBE MRTPI

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

**Costs application in relation to Appeal Ref: APP/C3240/D/20/3248834
Butchers Cottage, 52 Waterloo Street, Ironbridge, Telford, Shropshire TF8
7AA**

- 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 Annette Mary Bishton for a full award of costs against Telford and Wrekin Council.
 - The appeal was against the refusal of planning permission for replacement of 10 no. windows and 3 no. doors to existing house, including enlarging an existing door/window opening. Addition of a metal flue to side elevation of existing house.
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Decision

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

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Reasons

3. The 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 or wasted expense in the appeal process.
4. It sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It provides examples of unreasonable behaviour in terms of the substance of the matter under appeal, which include: -
 - Failure to provide evidence to substantiate each reason for refusal
 - Not determining similar cases in a consistent manner
 - Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or

issues to be considered being narrowed, thus reducing the expense associated with the appeal.

5. The Council's delegated officer report contained a detailed assessment of the proposal making specific reference to the Telford and Wrekin Local Plan 2011-2031, and the Severn Gorge Conservation Area Management Plan 2016 (SGCAMP). They have highlighted the advice given in the SGCAMP which indicates that the use of plastic and composite replacements in non-designated heritage buildings, such as the appeal site, should be strongly resisted. Insofar as both the windows and the flue were concerned the Council undertook an objective analysis of the proposal, taking into account specialist advice. Moreover, they have indicated, in their report, how the use of uPVC and composite materials would impact on the appearance of the host property when viewed from public places. Having regard to these matters I am satisfied that the Council has substantiated its reasons for refusing the planning application.
6. Although the Council did not specifically refer to individual examples in the area where uPVC windows had been used, it did acknowledge that there were some instances where this was the case. They accept that although the use of UPVC is heavily restricted, there were some instances where its use was considered appropriate with individual assessments having been carried out. It is clear that the issue raised by the applicant in this regard was taken into consideration as part of the determination of the planning application. Moreover, the Officer report makes it clear that the applicant was advised that all applications are assessed on their own merits. Such an approach is entirely reasonable to my mind and does not demonstrate that the Council has been inconsistent in its consideration of the applicant's proposal.
7. I note the submissions made that the Council would not visit the site to advise the applicant what would be suitable for her property and that it would not accept an amendment to the scheme removing the flue and installing Residence 7 windows throughout. These points are refuted by the Council who submit that the applicant did not take advantage of either its paid pre-application service or its free service, and that whilst given the opportunity to submit amendments to the planning application these were not forthcoming.
8. It seems to me that the engagement between the parties has not been as constructive or effective as it should have been. Had the Council met the applicant on site as part of the planning application process its concerns could have been identified at an earlier stage in the process, as opposed to them being raised 2 weeks before the application was determined. However whilst removing the flue may well have narrowed down the reasons for refusing the application, it is likely that the Council would still have refused the application even if Residence 7 windows were used throughout the property, because it is the use of the material that the windows and doors would be made of that the Council opposed in this conservation area and World Heritage Site, rather than the principle of replacement, which is clearly set out in its report.
9. Even 2 weeks before the application was determined, the applicant had the opportunity to amend the scheme following correspondence from the Council expressing its concerns. Such amendments were not submitted. Accordingly, the Council determined the application as submitted.

10. Given my findings above I consider that the applicant's time and expense in defending the appeal were a necessary part of the process. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. I recommend that the cost application should be refused.

J Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the application for an award of costs should be refused.

RC Kirby

INSPECTOR