The Planning Inspectorate

Costs Decision

Site visit made on 6 July 2020

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

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 August 2020

Costs application in relation to Appeal Ref: APP/D3505/Y/19/3243518
The Old Rectory, Rectory Road, Whatfield IP7 6QU

- 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 Mike & Jane Appleby for a full award of costs against Babergh District Council.
- The appeal was against the refusal of listed building consent for a single storey & two storey side extension to form kitchen/dining/ seating area with laundry, larder, WC & staircase to ground floor and bedroom/en-suite to first floor.

Decision

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

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This 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. An award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

3. There are four grounds for the claim; that the Council failed to produce evidence to substantiate the reason for refusal on appeal; that it acted contrary to well-established caselaw; that it acted contrary to national planning policy and guidance, and; that the Council's assessment was vague and generalised.

4. The applicants rightly point out that the Procedural Guide[1] sets out that the Council's statement of case must respond to the appellant's statement of case. Though the appeal comments of the Council's heritage team were rejected as late, it nonetheless submitted its appeal statement in good time. This stated that it had little further to add to its committee report, already accepted. In fact, it added nothing more than conditions.

5. Notwithstanding this, what it chose to include in its statement is a matter for the Council. In the event, the evidence of the Council in its committee report and in the heritage team's response to the application, was sufficiently clear and reasoned to substantiate its reason for refusal on appeal. While the

[1] Procedural Guide Planning appeals – England, The Planning Inspectorate, July 2020, para J.3.2

Council did not add to the evidence it had already submitted, in the circumstances, it did not behave unreasonably.

6. I appreciate the excerpts from the judgements concerning the application of paragraph 194 of the Framework. However, I do not see how the Council has misapplied paragraph 194 as a freestanding test. The passage in its committee report on paragraph 194 was immediately followed by the test in paragraph 196. It did not stop at paragraph 194, but went straight on to paragraph 196, weighing the public benefits. I cannot see how it ignored the judgements quoted.

7. I acknowledge that the summary of the heritage team's response found less than substantial harm to the designated heritage asset itself rather than to its significance, as indicated in paragraph 196 of the Framework. The same error was repeated in the committee report[2]. However, in the discussion section of the heritage team's response, after a long exposition describing the significance of the heritage asset, it concluded properly against paragraph 196, this time including the term significance. The preamble in the committee report also repeated the wording of paragraph 196, in full.

8. On a fair reading of the committee report taken as a whole, these careless omissions would not have misled the decisionmakers on the application and do not suggest that the outcome of the application would have been any different, had the full wording been included in each instance of the reference to paragraph 196. Accordingly, unnecessary or wasted expense has not been incurred by the appellant.

9. The PPG indicates that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, is an example of unreasonable behaviour. However, the heritage team's response described at length the significance of the building against published guidance and it analysed those aspects which would be affected by the demolition. It has not behaved unreasonably in this respect.

10. I appreciate that the outcome of the application for listed building consent will have been a disappointment to the applicants. However, the Council was not unreasonable in coming to that decision, and indeed, following consideration of the application, I have drawn a similar conclusion.

Conclusion

11. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Patrick Whelan

INSPECTOR

[2] Committee report paragraphs 3.9, 3.13 and 4.1