



Costs Decision

Site visit made on 1 September 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Costs application in relation to Appeal Ref: APP/Z4718/D/20/3253334 Park Farm House, Manor Road, Farnley Tyas, Huddersfield HD4 6UL

- 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 Mrs Eden for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a detached garage, replacement porch and extension, alterations and formation of associated landscaping/parking.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The applicant submits that the Council acted unreasonably during the determination of the application on the grounds of both substantive and procedural matters; and that, as a consequence of the Council refusing the application, she has been put to unnecessary expense in pursuing the appeal with the associated costs of doing so, which was entirely avoidable.
4. The Guidance states that, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded².
5. In relation to substantive matters, the applicant declares that the Council failed to: consider the application on its own merits; provide an objective analysis in order to support its assertions about the effects of the proposal; produce evidence to substantiate the reasons for refusal; and, appropriately weigh the public benefits of the proposal against the harm to the significance of the designated heritage assets of a Grade II listed building and conservation area.
6. The Guidance confirms that a local planning authority is at risk of an award of costs if it: prevents or delays development which should clearly be permitted,

¹ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

² National Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306.

- having regard to its accordance with the development plan, national policy and any other material considerations; fails to produce evidence to substantiate each reason for refusal on appeal; and/or, makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis³.
7. The submitted evidence illustrates that the Council was clear in highlighting its issues with the proposed detached garage which, ultimately, were not resolved to its satisfaction. Given the context of the appeal site, the Council was not unreasonable to give weight to its concerns about the effects of the proposed detached garage on the significance of the designated heritage assets and the living conditions of neighbours.
 8. Notwithstanding that I came to different conclusions to those of the Council on the main issues in my Decision, I consider that the Council objectively evaluated and considered the merits of the proposal, having regard to its statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990, relevant policies within the development plan and relevant guidance within the National Planning Policy Framework. Furthermore, in exercising its planning judgement, the Council adequately reasoned and substantiated its reasons for refusal; and demonstrated on planning grounds why, in its opinion, the proposal was unacceptable. As such, I consider that the Council did not behave unreasonably in its evaluation and determination of the application.
 9. I recognise that, although the Council acknowledged the public benefits of the proposal as a whole, it did not take all of the public benefits into account when weighing them against the harm of the proposed detached garage to the significance of the designated heritage assets. In this respect, the Council could be said to have acted unreasonably.
 10. Nevertheless, even if the Council had taken all of the public benefits into account, I cannot be certain that it would have concluded that they would have outweighed the harm. Moreover, this process would have addressed only the first reason for refusal and would, therefore, not have avoided the application being refused or it going to appeal. In this respect, the Council's unreasonable behaviour did not result in unnecessary or wasted expense in relation to the preparation of the appeal.
 11. In relation to procedural matters, the applicant declares that the Council failed to: co-operate with the applicant; adhere to deadlines in both providing comments following the submission of revised information and also issuing the decision; and, provide consistent and correct advice in relation to the listed status of Park Farm House.
 12. I recognise that these matters may have been frustrating for the applicant and meant that the Council did not fulfil its development management responsibilities. However, as stated within the Guidance, the behaviour of a local planning authority which may give rise to a procedural award of costs relates to unreasonable behaviour at the appeal and not at the application⁴. Even if I took this behaviour into account it is apparent that, although there were delays in the Council responding to the applicant, detailed comments on the proposal and the revisions were provided. Moreover, even though the

³ National Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306.

⁴ National Planning Practice Guidance, Paragraph: 047 Reference ID: 16-047-20140306.

period of consultation on the revised drawings was extended without the applicant's agreement, there is no substantive evidence before me which confirms that this alone had a prejudicial impact on the outcome of the application. Also, whilst the inconsistency of advice in relation to the heritage designation of Park Farm House was unfortunate, any unnecessary expense in relation to the preparation and revision of the focus of the heritage statement for the application was incurred during the application process, not at the appeal, and is therefore ineligible.

13. In terms of when a local planning authority's handling of the planning application prior to the appeal might lead to an award of costs, the Guidance states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation⁵.
14. The application was submitted on 6 October 2019 and was due to be determined on 7 January 2020. An extension was agreed by both parties until 4 March 2020, but the Council's decision notice was not issued until 13 March 2020. There is nothing before me which verifies that the Council provided a proper explanation for this delay. However, given that it was only seven working days after the agreed date, I am not persuaded that it constitutes unreasonable behaviour by the Council which justifies an award of costs.

Conclusion

15. Taking the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated, and thus a full award of costs is not justified.

F Cullen

INSPECTOR

⁵ National Planning Practice Guidance, Paragraph: 048 Reference ID: 16-048-20140306.