



Costs Decision

Site visit made on 29 September 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2020

**Costs application in relation to Appeal Ref: APP/K0235/D/20/3256940
Courtyard Barn, The Drive, Church Lane, Oakley, Bedford MK43 7ST**

- 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 George Powell for a partial award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for a single storey extension to existing dwelling.
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Decision

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

Procedural Matter

2. For clarity and precision, I have inserted 'Bedford' to the address in the banner heading above as it is listed on the appeal form.

Reasons

3. 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 expense in the appeal process. Patently this is a two-stage test. The PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process.
4. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded. An award of costs may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. Paragraph 049 of the PPG cites various examples of unreasonable behaviour by local planning authorities. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for substantive reasons, as considered below.
5. There are a number of elements that the applicant brings to their claim on substantive grounds, in particular a failure to produce evidence to substantiate the reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Additionally, the applicant asserts that the provision of information shown by the Council to be manifestly inaccurate or untrue.
6. The National Planning Policy Framework (the Framework) requires that local

planning authorities identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. Furthermore, although the Framework and PPG advise that it is important that all non-designated heritage assets are clearly identified as such, the PPG¹ also advises that the local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications.

7. In this case, having regard to the Council's Delegated Report, it is clear that the appeal property was identified as a non-designated heritage asset. Furthermore, the Council's first reason for refusal also clearly explains what the Council considers to be the harm arising from the proposed development in respect of the non-designated heritage asset and also refers to Policy 41S of the Council's Allocations and Designations Local Plan 2013, which specifically relates to heritage assets. Whilst the applicant also argues that the appeal property is not a non-designated heritage asset, I find this is a matter of planning judgement for the decision maker. Also, the fact that a property is identified as a non-designated heritage asset does not necessarily prevent its development.
8. In light of the above reasons and irrespective of the appeal property not being identified on a Local List, it is clear that the Council identified the appeal property as a non-designated heritage asset. Additionally, it is clear that consultation comments from the Council's Conservation and Historic Buildings Officer were taken into consideration in the assessment of the planning application. Therefore, in accordance with the Framework and the PPG, the appeal property has a degree of significance meriting consideration in the planning application process. I also note that the Council have previously identified the appeal property as a non-designated heritage asset in determining another planning application² at this site in 2015, which the applicant acknowledges in his Revised Heritage Statement dated 16 February 2020. However, the references towards an appeal decision³ are less relevant, due to it being issued before the first version of the Framework in 2012.
9. It will be seen from my decision that overall, I agree with the Council's observations and its refusal, and the decision was a matter of judgement based on the evidence before the Council. From the evidence before me, and in the absence of any additional information to the contrary, it follows that I am satisfied that the Council adequately substantiated its reason for refusal. In this case the appeal could not have been avoided.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. As such, an award of costs is not justified.

W Johnson

INSPECTOR

¹ Paragraph: 040 Reference ID: 18a-040-20190723

² Paragraph 2.19 in Officer Report for 15/00445/FUL

³ APP/W0205/A/08/2070965