
Costs Decision

Site visit made on 08 December 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Costs application in relation to Appeal Ref: APP/U4610/D/20/3258234 65 Brays Lane, Coventry CV2 4DS

- 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 David Saul, Witham Estates LTD, for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of planning permission for solar panels retrospective.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.¹
3. The applicant considers that the determination of the planning application fell far below the standard expected of a competent Local Planning Authority (LPA). The appellant claims that:
 - (i) there was a total lack of dialogue from the LPA during the application process and a lack of transparency. The applicant suggests that the Council could have requested a Heritage Impact Assessment (HIA) during the planning application process and asserts that the Council did not make any of their assessments, including matters of heritage impact, publicly available. As such, it is contended that the Council did not discharge its duty under Paragraph 38 of the National Planning Policy Framework (the Framework). It is also claimed that at the time of writing the appellant's statement, neither the Council Officer report nor consultee responses were available on the Council's website, and due to Covid-19 restrictions it was not possible to collect hard copies of documents from the Council office.
 - (ii) the Council has not maintained a Historic Environment Record (HER), contrary to advice in paragraph 187 of the Framework; and it has not completed Conservation Area Appraisals (CAAs) or Management Plans (MPs), as stated in Policy HE1 of the Coventry Local Plan 2016. It is therefore asserted that it is not clear what the Council consider to be

¹ Paragraph 030 Reference ID: 16-030-20140306, revision date 06 03 2014 – National Planning Practice Guidance.

the extent of the setting of the CA and how impact will be controlled. As such, it is contended that the Council has failed to discharge its duty under paragraph 187 of the Framework and that the assessment of the planning application was inherently flawed.

- (iii) that the Council did not correctly apply the advice in paragraph 196 of the Framework, as it did not weigh the alleged harm against the public benefits.
4. I acknowledge the frustration of the appellant if there was no dialogue with the LPA before the application was determined. However, the evidence before me suggests that the Council considered the only way of resolving the matter was for the solar panels on the front roof slope to be removed. Hence, dialogue with the applicant is unlikely to have secured development that would have improved the economic, social and environmental conditions of the area (which is the aim of working proactively with applicants, as advised in paragraph 38 of the Framework). Regarding a HIA, one could (or even should) have been submitted with the application at the outset. With or without a HIA, the Council is obliged to reach its own judgement regarding the effect of the development on the setting of the Conservation Area (CA). Consequently, requesting a HIA could have resulted in unnecessary and wasted expense for the applicant. Hence, the evidence before me does not clearly demonstrate that the Council did not behave in accordance with paragraph 38 of the Framework or that it behaved unreasonably in this regard.
5. I agree that if the Council Officer's report and/or copies of consultee comments were not available on the Council's website at the time the appellant had to write their appeal statement, this would have hindered the writing of the statement. The Council has not provided an explanation as to why this was the case. I also acknowledge that C-19 restrictions have impacted all working environments in terms of face-to-face contact. However, would it not have been possible for the appellant to ask for electronic or hard copies of the desired documents to be emailed or posted to them? Bearing this question in mind, I am not able to conclude that the only reason the applicant did not have copies of the Council Officer's report and/or consultee comments at the time of writing their statement was due to unreasonable behaviour by the Council.
6. I acknowledge the applicant's claim that the Council has not maintained a HER. However, I have not been provided with any substantive evidence to substantiate the claim. In addition, I note that paragraph 187 of the Framework states that LPAs should maintain or have access to a HER. Again, from the evidence before me I am not able to conclude that the LPA did not have access to a HER. I also note that the range of documents submitted with the appeal include a) a plan showing the CA boundary, b) an assessment of the 'Middle Stoke Character Area' and c) a copy of the 'Stoke Green conservation area control plan'. Hence, it is clear where the CA is and some assessment of its character and control measures are provided. I do not know if the appellant had access to these documents either prior to submitting the planning application or prior to submitting the appeal. As such, I cannot conclude that the Council behaved unreasonably by withholding significant information from the applicant; nor do I consider that the appraisal of the planning application was inherently flawed.

7. Regarding paragraph 196 of the Framework, I note that the Council Officer's report indicates that in accordance with paragraph 196, the less than substantial harm identified should be weighed against any public benefits as part of the decision-making process, which suggests that the Officer was aware of the requirement. However, I accept that neither the Council Officer's report nor the decision notice explicitly show that this step in the determination process had been undertaken. As such, there is no evidence that the weighing of public benefits was undertaken. It may be that the Council did not consider there to be any public benefits. However, if this were the case then this should have been clearly stated in the assessment/decision notice.
8. I therefore consider that there was a procedural error in the determination of the application, which I also consider constitutes unreasonable behaviour by the Council. I am not able to conclude with certainty what the Council's decision would have been if they had either carried out the weighing exercise or if they had explicitly demonstrated that public benefits had been weighed in the balance. However, I consider it probable that should the Council have considered there to be any public benefits which outweighed the harm to the heritage asset it had identified, then it would have concluded as such. I therefore consider it highly likely that even if the Council had gone through the process, or evidenced that it had, as required by paragraph 196 of the Framework, it would still have refused the application and the applicant would still have had the option to appeal the decision.
9. I therefore conclude that it has not been demonstrated that either the Council behaved unreasonably, or that the unreasonable behaviour I have identified, which directly caused another party to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

J Williamson

INSPECTOR