
Costs Decision

Site visit made on 9 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3256886 Clock House, Road off Honeystreet North of Canal Honeystreet, Pewsey SN9 5PS

- 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 Donovan Love for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the demolition of two dwellings and vacant commercial buildings and replacement with six dwellings.
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Decision

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

Reasons

2. 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.
3. The applicant submits that the Council has acted unreasonably as it acted contrary to the advice of its professional officers which followed pre-application advice and engagement with the parish council. He considers that the decision was made for political reasons rather than being based on national or local planning policy.
4. PPG further indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The scope of my determination is to consider whether there has been unreasonable behaviour on the grounds claimed, resulting in unnecessary or wasted expense with reference to the guidance in the PPG. It is not within my jurisdiction to deliberate on individual Councillor conduct with reference to the Wiltshire Council protocol on good practice.
6. Notwithstanding that national policy encourages preapplication engagement, the PPG does not indicate that the Council is duty bound to follow the advice of its professional officers. Therefore, this alone would not be evidence of unreasonable behaviour. However, if a different decision is reached the Council

has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

7. In this case, the main issue related to the impact of the proposal on the character and appearance of the area including the impact on the setting of heritage assets and the special qualities of an Area of Outstanding Natural Beauty. The relevant national and local policies essentially call for a planning judgement to be made and the evidence indicates that the Council considered the relevant policies and national guidance. This is reinforced by the committee minutes and the applicant acknowledges that these record that the decision was made on the basis of aesthetic judgement and preference.
8. Questions of heritage significance that identify the qualities that are important to the character and appearance of an area is not a simple technical calculation where there can only be one correct outcome. Rather it requires the exercise of judgement and application of weight to the circumstances of the case. It is foreseeable that different conclusions might be drawn following such analysis.
9. This is demonstrated in the conflicting opinions in the advice of the Council's Conservation Officer¹ and the heritage assessments submitted to the Council by other competent experts. Although, ultimately, I did not agree with the heritage assessments provided by those interested parties, I do not consider it was unreasonable for the Council to place weight on that evidence in coming to their view. Furthermore, they were required to have regard to them.
10. The planning statement submitted by the Council provides an adequate explanation of why the Council considered harm would arise to the character and appearance of the area having regard to the relevant national and local policies.
11. Accordingly, the evidence before me shows that the Council considered the correct policies and exercised their judgement accordingly. They attributed different weight to the respective relevant factors than their officers but did so with the benefit of informed evidence. Therefore, they did not act unreasonably. It follows that it was not unreasonable for the applicant to test that judgement at appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector

¹ Reported in the Eastern Area Planning Committee Report