



Costs Decision

Site visit made on 25 January 2021

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 17th March 2021

Costs application in relation to Appeal Ref: APP/X1118/W/20/3252563 Mockham Down House, Mockham Down Gate to Kimbland Cross, Bratton Fleming, Barnstaple EX32 7LQ

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972 as amended, section 250(5).
 - The application is made by Mr & Mrs Geoff Savage against North Devon District Council ('NDDC').
 - The appeal was against the refusal of NDDC to grant planning permission for development described on the application form supporting application Ref 66068, dated 30 December 2018 as 'erection of 2 buildings. Building 1 – stable block including 2 stables, 1 hay barn, 1 tack room. Building 2 – garage/ workshop.'
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. The appellants' case for a full award of costs raises both procedural and substantive concerns with NDDC's approach to handling application Ref 66068 (in part a retrospective application for a stables and garage undisputedly within the setting of the 'Camp on Mockham Down', a scheduled monument).³ Their case for costs is a detailed history of the circumstances that have lead things to where they now are. This decision, however, focusses on the substantive points made therein. I would note at this stage that my allowing the appeal relates to the planning merits of the scheme; whether or not unreasonable behaviour occurred is a separate matter.
4. The appellants argue that the Council's pre-application advice failed to identify 'issues or concerns' that might lead to refusal of permission in conflict with the Council's 'pre-application protocol' (appended to their costs claim, dated June 2015). The appellants further contend that there is an ambiguity in the phrasing of NDDC's pre-application such that they were unaware of the need to

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

³ Under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 as amended.

- undertake an assessment of potential implications of the scheme on the ancient monument.
5. The appellants also cite various criticisms of the efficiency or proactivity with which the application was handled and the robustness of Historic England's objections to the location and orientation of the stables (particularly relative to their position in respect of other development nearby). The PPG clarifies that statutory consultees may have costs awarded against them.⁴ Historic England are a statutory consultee, as listed in schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended ('DMPO').⁵
 6. The PPG sets out that prospective applicants should expect a clear and authoritative view on the merits of a proposal.⁶ That is reflected in the Council's pre-application protocol, which sets out that 'our advice will clearly set out the issues likely to be raised by the development...'. The Council's pre-application advice sets out how 'an assessment will need to be made on the impact of this development on the setting and fabric of the scheduled ancient monument..'. As I understand it, the appellants took that phrase to mean that the Council would undertake such an assessment, and I accept that could have been phrased in a more directive manner.
 7. However, in itself, that phrase clearly identifies that implications in respect of the Camp will be important (implications that ultimately led to NDDC refusing permission for the scheme). The PPG also clarifies that the pre-application stage should be seen as a two way process.⁷ It is evident from NDDC's pre-application advice that initial discussions were on the basis of limited information (hence the detailed iteration of what would be needed were the appellants minded to proceed to make a planning application).
 8. Whilst I understand that the stables were created at the appeal site out of expediency, on the evidence before me there is something of a jump between pre-application advice and a firmed-up application being made. As such, on a plain reading, NDDC's pre-application advice gives a suitably detailed explanation of the considerations relevant to the proposal, relative to a scheme at an initial stage of formulation. I note in that context that the Council's pre-application protocol, reasonably, sets out how such advice will 'not cover every possible detail'.
 9. I appreciate that planning processes are occasionally intricate, and that the appellants may not have been familiar with how to go about applying for permission. However to assume that the Council would undertake an assessment of a proposal on the significance of a heritage asset is somewhat naïve; the 'ambiguity' referred to in paragraph 6 above cuts both ways.
 10. Moreover the Council's pre-application advice sets out clearly that a scheme will have to meet the information requirements set out on the Council's 'local list'.⁸ NDDC's local list specifies that a heritage statement should be provided

⁴ Reference ID: 16-029-201402306.

⁵ Including at row (r), where development is 'likely to affect the site of a scheduled monument'.

⁶ Reference ID: 20-010-20150326.

⁷ Reference ID: 20-005-20150326.

⁸ Under article 11(3) of the DMPO.

for development that will impact on a heritage asset. A cursory scan of the National Planning Policy Framework or Planning Practice Guidance would also have identified that the onus falls squarely on applicants to assess implications on heritage assets in the first instance.⁹

11. The Council's pre-application advice could have flagged up how Historic England would be involved in the processing of an application, and I note that the PPG underscores the value of engaging statutory consultees at an early stage.¹⁰ However in my view it is not incumbent on an authority to explain every facet of the planning process in pre-application advice. Pre-application advice is not a substitute for the formal decision-making process on an application,¹¹ and as noted above Historic England have a statutory role in the process.
12. I acknowledge that application Ref 66068 took just shy of a year to determine. However, following on from my reasoning above, the supporting Heritage Impact Assessment ('HIA') is dated 30 May 2019, some five months after the application was made. Setting aside the appellants' concerns regarding the robustness of Historic England's perspective on the merits of the scheme, it is evident from the appellants' application for costs that there were exchanges and meetings with the Council and Historic England in respect of the scheme before the Council reached a decision.¹² As such issues of timeliness cannot be said to amount to demonstrably unreasonable behaviour.
13. Appendix 4 to the appellants' application for an award of costs is a critique of Historic England's representations of 25 July 2019.¹³ The appellants contend that identifies factual inaccuracies in Historic England's comments. However, on a fair reading, they are matters of planning judgement; arguably permanent buildings affect openness to a greater degree than trees, and as set out in paragraph 17 of the appeal decision I saw that the stables partially intervenes in a line of sight upwards towards the Camp from around the site access. Planning is inherently reliant on finely balanced judgement.
14. I acknowledge that the position of Historic England in respect of application Ref 66068 differs from comments made in respect of various buildings broadly to the north of the site. However even slight changes in location and context may result in very different assessments; in that vein I note that the historic mapping referred to in the HIA shows a different pattern of historic land uses and a mine shaft in broadly the location of those other buildings. Whilst the appellants object to the phrase that each proposal must be determined on its particular merits, that is inevitably the case (and indeed the basis on which I found that the proposal would be acceptable).
15. Moreover there is limited information before me in respect of neighbouring schemes. They evidently have a complex planning history, noting that reference is made to various retrospective applications. I also note, at paragraph 20 of the associated appeal decision, that changes to the setting of a

⁹ NPPF paragraph 189, PPPG Reference ID: 18a-009-20190723.

¹⁰ Reference ID: 20-008-20190315.

¹¹ Reference ID: 20-011-20140306.

¹² Including from Historic England dating from 7 March 2019.

¹³ By Southwest Archaeology.

designated heritage asset which have affected significance over time do not inherently justify further change.

16. The appellants' further arguments responding to the Council's rebuttal to their costs claim are somewhat convoluted. They state 'I have always believed that there would be a consistent approach to planning decisions and that all applications would attract an equitable response from the LPA. If not, the piecemeal development that [Historic England] complains about would become the norm'. That appears to argue that even if harm to the setting of the scheduled monument arose in other instances, a fair share of harm should also be allowed in respect of the proposal.
17. There is further some discussion in the evidence before me as to a potential alternative scheme of mobile field shelters as opposed to a permanent building. That is a clearly different proposal to that submitted under application Ref 66068; the emphasis in the NPPF to engaging constructively does not, in my view, extend to suggesting entirely alternative arrangements.
18. In that context the appellants refer to being advised by NDDC that they would be undertaking development here 'at risk'. That is strongly suggestive that they were aware that, to some extent, in proceeding with the scheme without permission in place, there may be some form of adverse implications down the line.
19. Finally the appellants take issue with Historic England's ostensibly helpful position that the rotation of the stables 90 degrees would not be objectionable. The appellants state that Historic England made representations to the effect that 'they would not object' if that were to be undertaken. However that is a misrepresentation of the correspondence I have from Historic England dated 26 September 2019. That states how Historic England 'would not object to the proposed relocation', but nevertheless that they were of the view that harm to the Camp would still result.
20. The appellants' case for an award of costs essentially reduces down to a dispute over the planning merits of the scheme; those are addressed in the associated appeal decision. Having reviewed all the information before me, it appears that procedural issues and delays arose simply because of assumptions which had been made and their consequences for progressing the scheme, rather than by virtue of unreasonable behaviour. I would also note that at appeal the Council has supported its position in opposition to the development with accurate references to the development plan, NPPF, and to the characteristics of its site and surroundings. NDDC's position is cogent and clear, albeit that I reached a different judgement to them.
21. On account of the foregoing reasoning, although I appreciate the appellants' frustration with how circumstances have evolved in respect of application Ref 66068 and beforehand, insofar as relevant in this instance I find that no action or inaction taken by the Council or Historic England amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense at appeal.

Conclusion

22. Having taken account of all other matters raised, and with regard to relevant elements of the PPG, for the above reasons I therefore conclude that an award of costs is not justified in this instance.

Thomas Bristow
INSPECTOR