



Costs Decision

Site visit made on 11 May 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 29th June 2021

Costs application in relation to Appeal Ref: APP/Q4625/W/20/3265555 Brook Cottage, Brook Green Lane, Barston, Solihull B92 0JW

- 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, section 250(5).
 - The application is made by Stewart Pearson for an award of costs against Solihull Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for conversion of an agricultural barn to residential dwelling.
-

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 application centres on the applicant's claim that the Council (a) made inaccurate assertions about the proposal's substance and impact, which were not supported by objective analysis, evidence and policy requirement and (b) refused planning permission on a planning ground capable of being dealt with by condition.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they make inaccurate assertions about a proposal, prevent development which should clearly be permitted having regard to its accordance with relevant policy and material considerations, or refuse planning permission on a planning ground capable of being dealt with by condition.
5. Regarding matter (a) in respect of reason for refusal (RFR)1 and RFR4, one of the central matters is whether the proposal would constitute re-use of a building that is of permanent and substantial construction (PSC), under the terms of paragraph 146(d) of the National Planning Policy Framework (the Framework).
6. It will be clear from my appeal decision, that I have reached a different view from the Council on whether the proposal would constitute re-use of a building that is of PSC. Nevertheless, the Council was not duty bound to find the technical evidence prepared by the applicant's civil and structural engineering

- consultant in the first structural engineer's report (SER)¹ to be automatically persuasive. Also, I see evidence in the Planning Officer's Report that the Council reached its view, informed by specialist technical officer advice from Building Control.
7. The extent of building works required to adapt the building for re-use is not explicitly mentioned in paragraph 146(d) of the Framework. Within this context, it would have been more concise for the Council to have omitted the text 'which could be converted into a domestic dwelling without significant building works' from the wording of RFR4. Nevertheless, the wording of paragraph 146d) does not preclude consideration of the extent of building works required to adapt the building, to inform judgement on whether the proposal meets the 146d) test.
 8. Furthermore, the difference in content between the first SER submitted by the applicant, and the second SER subsequently submitted with the appeal, supports the conclusion that the Council was entitled to reach its judgement that insufficient information was available to support a finding of re-use of a building that is of PSC, at the time of making its decision.
 9. Therefore, the Council was entitled to reach its planning judgement on the question of re-use of a building of PSC.
 10. The reference to 'intensification in the use of the site' in the Planning Officer's Report indicates that the Council considered comparison with the existing agricultural use in assessing the impact of the proposal, including in respect of associated domestic paraphernalia.
 11. Furthermore, I see evidence in the Planning Officer's Report of the Council's awareness of the listed building consent for residential conversion of another building beyond the appeal site². In the light of this, and given that the other building has a different location and relationship to the listed building, compared to the appeal building, the Council was entitled to exercise its planning judgement in respect of the heritage issue.
 12. Given the concern about the impact of the proposed modern looking dwelling and the totality of domestic paraphernalia likely to result on the appeal site, which is in the Green Belt and in the vicinity of a listed building, the Council was entitled to reach its planning judgement regarding the impact on the openness of the Green Belt and the setting of the listed building.
 13. It will be clear from my appeal decision that I have reached a different view from the Council regarding whether the appeal proposal would be 'isolated' in the sense of paragraph 79 of the Framework. Nevertheless, the Council was entitled to exercise its planning judgement on this and other aspects of locational suitability.
 14. Regarding matter (b), I see evidence in the Planning Officer's Report that the Council considered the scope for planning conditions to address various matters. Furthermore, the scope of the harmful factors identified in respect of the main issues in this case exceeds that which is capable of being remedied by planning condition.

¹ Dated 13 February 2020.

² Ref: PL/2015/50999/LBC.

15. To conclude, I find as follows. In relation to matter (a) the Council was entitled to apply its planning judgement about the proposal's impacts. In respect of matter (b) the Council did not refuse planning permission on a planning ground capable of being dealt with by condition.
16. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case in respect of matters (a) and (b).

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for costs fails.

William Cooper

INSPECTOR