



Costs Decision

Site visit made on 29 June 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2021

Costs application in relation to Appeal Ref: APP/J0405/W/20/3264738 Akeley House, Buckingham Road, Akeley MK18 5HL

- 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 & Mrs David Parker for a full award of costs against Buckinghamshire Council - North Area (Aylesbury).
 - The appeal was against the refusal of planning permission for the demolition of an existing dwelling and erection of new replacement dwelling.
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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. Paragraph 31¹ of the PPG sets out that unreasonable behaviour in the context of an application for an award of costs may be either procedural in relation to the process; or substantive in relation to the issues arising from the merits of the appeal.
4. The applicants submit that the Council has acted unreasonably with regard to paragraph 49² of the PPG and the substance of the matter under appeal on four main grounds. Firstly, that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Secondly, that the Council failed to produce evidence to substantiate each reason for refusal on appeal. Thirdly, that the Council made vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Finally, that the Council refused planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The applicants also consider that the Council has acted unreasonably with regard to the procedure in its determination of the planning application that has led to the appeal.

¹ Paragraph: 031 Reference ID: 16-031-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

Substantive grounds

6. The applicants consider that the Council's conservation officer incorrectly assessed the setting and visibility of the adjacent listed building. Specifically, this relates to the listed building being set within its own 'parkland' and visible in views across the appeal site when travelling towards Akeley along Buckingham Road. Furthermore, the Council failed to take into account how its own actions, in permitting the removal of trees with no compensatory planting, had further opened up the setting of the listed building. They also consider that the proposed replacement building was incorrectly assessed as a two-storey building.
7. It is evident that the Council's conservation officer reviewed the submitted heritage information, photographs and historical mapping. This is confirmed in an email dated 3 May 2019.
8. The conservation officer also set out why she considered the listed building would have been set within its own parkland. She confirmed she relied on pre-application advice dating back to 2014 which stated that 'Old plans show this building is set in parkland with the main front facing west towards the site'. She advised that she could not corroborate this as she was unable to access microfiche files due to the current pandemic. However, the applicants' evidence was submitted many months in advance of the start of the pandemic. Accordingly, I find that it was unreasonable of the conservation officer to have not viewed those files in 2019 when the setting of the listed building was evidently a significant point of dispute.
9. The conservation officer's comments set out detailed reasons and analysis as to why the proposal would be harmful to the heritage asset. This was prepared having seen the applicants' evidence and was not solely reliant on the stated 'parkland' setting. I have no evidence that this analysis was based on an incorrect height of the proposed replacement dwelling despite its description of the building as two-storeys.
10. It will be seen from my decision that I have not entirely agreed with the conservation officer's assessment about the visibility of the appeal site in relation to The Old Rectory. As this is dealt with in more detail in the main appeal decision, there would be no purpose in repeating my findings on them here. However, given that I have largely agreed with the Council that the proposal would have an adverse impact on the setting of the heritage asset, it follows that I do not consider its reason for refusal with regards to the effect on the listed building to be unreasonable.
11. Notwithstanding that I have found that the failure to view the microfiche files amounted to unreasonable behaviour, based on what I have read, I do not consider that had this been done that it would have changed the Council's view that the scheme was unacceptable. Consequently, it seems to me that an appeal would not have been avoided had the Council behaved differently.
12. The Council's second reason for refusal concerned the lack of a tree survey and arboricultural information. The applicants assert that it was unreasonable of the Council to have refused the scheme on this basis as this information could have been secured through a suitable condition.

13. The Council's tree officer identified that there was potential for trees to be negatively affected. Whilst the proposed development would occupy a similar footprint to the existing dwelling, it would be a larger structure. It was not unreasonable of the Council to require tree survey information in these circumstances.
14. In view of the time that had elapsed since pre-application advice was provided in 2014, it was not unreasonable for the Council to require up to date information. In the absence of survey information regarding trees, I agree that it was not possible for the Council to carry out an initial assessment of the effect of the proposed development on nearby trees. Consequently, it follows that I do not consider it appropriate to secure this information via a condition and the Council has not behaved unreasonably in seeking this information when it did. I do however agree that tree protection could be secured via a condition.

Procedural grounds

15. The appeal scheme took a considerable time to determine. I note during this period there were a number of staff changes at the Council which may have contributed to this. Whilst this is unfortunate and frustrating for the applicants, it is not unreasonable. I have nothing before me to suggest that the applicants could not have progressed an appeal against non-determination.
16. I note correspondence from the Council dated 11 April 2019 that confirmed that the planning application would be likely to be refused, subject to sign off by a senior colleague. Due to the fundamental nature of the Council's concerns, the Council advised that the application could be withdrawn. There is nothing to suggest that at any time the Council indicated to the applicants that they should amend the scheme to overcome the Council's concerns.
17. Notwithstanding this, the application was not refused at that time and it is evident that the applicants made amendments to the scheme some months later. The amendments to the scheme would have added delay in handling the planning application which in combination with a change in personnel may have contributed to the lengthy timescales for the determination of the application.
18. Despite the delays and difficulties in communications that followed the submission of the amended drawings, given the Council's fundamental concerns with the scheme, I nevertheless conclude that a differing approach on the Council's part would not have avoided the necessity of progressing an appeal.

Conclusion

19. For the reasons given I conclude that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated, and that an award for costs is therefore not justified.

Rachael Pipkin

INSPECTOR