



Costs Decisions

Site visit made on 20 July 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2021

Costs application in relation to Appeal A: APP/H1515/W/20/3260135 Canterbury Tye Hall, Doddington Road, Pilgrims Hatch CM15 0SD

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs N Yardy for an award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of listed building consent for demolition of buildings and conversion of former farm buildings to form 4 dwellinghouses.
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Costs application in relation to Appeal B: APP/H1515/W/20/3260136 Canterbury Tye Hall, Doddington Road, Pilgrims Hatch CM15 0SD

- 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 Mr & Mrs N Yardy for an award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of planning permission for demolition of buildings and conversion of former farm buildings to form 4 dwellinghouses.
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Decisions

1. The applications for awards of costs are 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 applications centre on the applicants' claim that the Council: (a) made inaccurate assertions about the proposal's impact and benefits, which were not supported by objective analysis and evidence; (b) failed to produce evidence to substantiate a reason for refusal (RFR); and (c) acted contrary to, or not following, well-established case law.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they behave in such ways.
5. Regarding matters (a), (b) and (c), in respect of listed building matters, the Council's set out in the listed building consent RFR the view that the proposal would not provide 'any public benefit'. Such a view does not reflect the public benefits in terms of housing supply in a situation of shortfall in the borough,

- beneficial architectural decluttering, stimulation of investment in the fabric of heritage buildings, and a modest improvement to highway safety.
6. It will be clear from my decision that I have found harm in respect of the fabric of the listed barn. Thus, this element of the listed building RFR is not unreasonable. However, given the combined substance of the public benefits, there does not appear to be a substantive and precise rationale to the 'no benefits' element of this RFR. It also appears that the Council did not have regard to 'positive alterations' type heritage benefits acknowledged in case law.
 7. Regarding matters (a) and (b), the highway safety RFR in Appeal B stated that the development would give rise to additional traffic movements in to and out of the substandard and dangerous vehicular access, and would therefore result in an unacceptable impact on highway safety.
 8. That the site access is substandard is not disputed, it being acknowledged in the applicants' Planning Appeal Statement, for example. Thus that element of the RFR was not unreasonable.
 9. However, given the substantive evidence of the applicants' transportation consultants, indicating a likely reduction in traffic and enhanced highways safety, and the Highway Authority's similar conclusion, it is reasonable to expect a substantive, evidence-based rationale to have been articulated for the Council's assertion of additional traffic and consequent highway safety harm.
 10. I see in the Minutes of the Council's Planning and Licensing Committee of Wednesday 10 June 2020 that several Members advised they had witnessed near misses and accidents at the access site. However, while local residents' estimates and calculations of traffic have been submitted since the Council's decision on Appeal B, there was no expansion in the Committee Minutes or RFR to explain how a finding of additional traffic was arrived at. The Planning Officer's Report, which found no harm in this respect, does not provide such calculation or rationale. It is therefore not clear that there was a reasonably substantive or precise basis to the Council's assertion of additional traffic and consequent highway safety harm.
 11. To conclude, I find as follows. In relation to matters (a), (b) and (c) and the listed building RFR, the Council has acted unreasonably through not recognising substantive public benefit. In relation to matters (a) and (b) and the highway safety RFR, the Council has acted unreasonably through failing to articulate a substantive, evidence-based rationale for its assertion of additional traffic, and consequent highway safety harm.
 12. However, given the harm to the listed barn's fabric, and community concern about the safety of the access, it is not clear that had the Council's decisions more closely reflected the above matters, the appeals would have been avoided or the core arguments been substantially different in scope.

Conclusion

13. 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 applications for costs fail.

William Cooper INSPECTOR