



Costs Decision

Site visit made on 1 September 2021

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Costs application in relation to Appeal Ref: APP/J2210/W/20/3256681 68 Old Dover Road, Canterbury, CT1 3DF

- 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 Cityscape Ltd for a [partial] [full] award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for part two-storey, part three-storey building with the basement, comprising 37 student apartments (including warden's accommodation) with communal facilities including cycle and refuse storage, amenity areas and three 'operational', parking spaces for service/maintenance vehicles, following demolition of the existing dwelling and a garage.
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Decision *[where refusing]*

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

OR

Decision *[where allowing]*

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The application

3. The council has failed to produce evidence to support its reason for refusing planning permission. The council's 2 paragraph statement, provides no explanation or analysis of existing development in the area, its scale, prominence, fenestration and no detailed explanation given as to the impact upon the historic environment. There is no assessment of how heritage assets might be adversely affected. No convincing justification is provided for the claimed harm to heritage assets. No assessment is made as to whether the claimed harm is substantial or less than substantial. If it is less than substantial harm, the harm should be weighed against the public benefits of the proposal. No such assessment has been made This limited assessment, seeking to justify the committee's decision stands in stark contrast to the very positive

assessment of the proposals within the report to committee and in the verbal assessments made by officers at the committee meeting itself. The planning committee rejected the detailed and specialist assessment of its officers, instead expressing personal dislike of the design and provided limited justification for their viewpoint. Furthermore, the committee did not weigh that perceived harm against the public benefits of the proposal. The appellant was put to unnecessary expense because of that unreasonable behaviour and an award of full costs is justified.

The rebuttal

4. The council made no response to this application for costs.

Conclusions

5. When making a decision on a planning application, a council is not bound to follow the advice of its professional officers. However, if it differs from its officers, and refuses planning permission against advice, it still carries the obligation to give reasons for the decision. In a case, such as this, where matters of aesthetics and opinion as to architectural merit and conservation issues are at its heart, it can be difficult for these reasons to be articulated. Nevertheless, the applicant/appellant is entitled to be given reasons which set out an informed and rational view that can be supported by a reasoned explanation. It is not satisfactory for a decision of refusal to rest on personal taste.
6. It will be seen that my decision on the appeal has not supported the council's decision. That could have been because I found one set of arguments more compelling than the opposing set. However, in this case there were not arguments or explanations for the decision that reached a reasonable standard to justify the decision, since the council could not support its decision with a clear explanation of harm that would be caused.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Canterbury City Council shall pay to Cityscape Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Canterbury City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Terrence Kemmann-Lane

INSPECTOR