The Planning Inspectorate

Costs Decisions

Site visit made on 12 October 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Costs application in relation to Appeal Ref: APP/D5120/C/21/3269261
45 Sidcup Hill, Sidcup DA14 6HJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Mark Hendy of Shanly Homes Limited for a partial award of costs against the Council of the London Borough of Bexley.
- The appeal was against an enforcement notice alleging the erection of an electrical substation.

Costs application in relation to Appeal Ref: APP/D5120/W/21/3269272
45 Sidcup Hill, Sidcup DA14 6HJ

- 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 Mark Hendy of Shanly Homes Limited for a partial award of costs against the Council of the London Borough of Bexley.
- The appeal was against the refusal of planning permission for development described as "Retention of Electrical Substation".

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has both behaved unreasonably; and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application is for a substantive award of costs relating to whether the Council considered the effect of development correctly in terms of its relationship with Old Forge Way Conservation Area.

3. The appellant alleges that the Council has referred to the wrong test within their reason for issuing the enforcement notice and for refusal of the planning application. These refer to the electrical substation failing to preserve and enhance the setting or appearance of the Conservation Area.

4. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The Act does not refer to the setting of a Conservation Area. Consequently, the duty under the Act is to preserve or enhance the character or appearance of the Conservation Area, not the setting.

5. The references to setting come from planning policy. Paragraph 200 of the National Planning Policy Framework refers to harm to the significance of heritage assets, including the effect of development within their setting. This does not refer to preservation and enhancement, consequently that terminology can be confusing in relation to setting.

6. Nevertheless, Policy CS19 of the London Borough of Bexley Core Strategy refers to conserving and enhancing the significance of heritage assets, including Conservation Areas and their setting. It also seeks to protect heritage assets from development likely to adversely impact on the significance, integrity, character or appearance of an asset or its setting. The reasons for refusing the planning application and issuing the enforcement notice reflect this policy.

7. On that basis, the reasons for refusing the planning application and issuing the enforcement notice do reflect the requirements of planning policy. The way the reason for issuing the notice was expressed did not, therefore, constitute unreasonable behaviour.

8. In any event, I have concluded in my decisions on the appeals that the electrical substation has affected the setting of the Conservation Area and, thereby, caused harm to its significance as a heritage asset. Given the clear concerns of the Council relating to the setting of the Conservation Area, the appellant needed to address this matter in the appeal. So, even if the way the Council had dealt with this had been incorrect, this would not have led to unnecessary or wasted expense in the appeal process.

9. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

AJ Steen

INSPECTOR